

# **EXHIBIT A**

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18 *Attorneys for Defendant and*  
 19 *Counterclaimant Empire Distribution Inc.*

20 UNITED STATES DISTRICT COURT  
 21 CENTRAL DISTRICT OF CALIFORNIA  
 22 WESTERN DIVISION

23 TWENTIETH CENTURY FOX  
 24 TELEVISION, a division of  
 25 TWENTIETH CENTURY FOX  
 26 FILM CORPORATION, a Delaware  
 27 company, and FOX  
 28 BROADCASTING COMPANY, a  
 Delaware corporation,

Plaintiffs,

v.

EMPIRE DISTRIBUTION, INC., a  
 California corporation,

Defendant.

Case No. 2:15-cv-02158-PA-FFM

Hon. Percy Anderson

**EMPIRE DISTRIBUTION, INC.'S  
 REQUEST FOR PRODUCTION OF  
 DOCUMENTS**

*Caption continued on next page.*

EMPIRE DISTRIBUTION, INC., a  
California corporation,

Counterclaimant,

v.

TWENTIETH CENTURY FOX  
TELEVISION, a division of  
TWENTIETH CENTURY FOX  
FILM CORPORATION, a Delaware  
company, and FOX  
BROADCASTING COMPANY, a  
Delaware corporation,

Counter-Defendants.

**PROPOUNDING PARTY: EMPIRE DISTRIBUTION, INC.**

**RESPONDING PARTIES: TWENTIETH CENTURY FOX  
TELEVISION, TWENTIETH CENTURY FOX  
FILM CORPORATION, AND FOX  
BROADCASTING COMPANY**

**SET NO.: ONE**

TROUTMAN SANDERS LLP  
5 PARK PLAZA  
SUITE 1400  
IRVINE, CA 92614-2545

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant and Counterclaimant Empire Distribution, Inc. ("EMPIRE DISTRIBUTION") hereby serves this Request for Production of Documents upon Plaintiffs and Counter-Defendants Twentieth Century Fox Television, Twentieth Century Fox Film Corporation, and Fox Broadcasting Company (collectively "FOX").

### **INSTRUCTIONS**

A. Pursuant to Fed. R. Civ. P. 34 (b), FOX shall respond in writing to each of these requests and produce all responsive documents within its possession, custody or control, within thirty (30) days after the service of these requests, at the offices of Troutman Sanders, LLP, located at 5 Park Plaza, Suite 1400, Irvine, CA 92614.

B. Pursuant to Fed. R. Civ. P. 34 (b)(1)(C), FOX shall produce any ELECTRONICALLY STORED INFORMATION in accordance with the ESI Production Format attached as **Exhibit A**, unless otherwise agreed to in writing by the parties.

C. If FOX is unable to comply with any particular request, in whole or in part, FOX shall state in its response that a diligent search and reasonable inquiry has been made in an effort to locate the items and provide the reason for its inability to comply – i.e., that the document never existed, has been lost, stolen or destroyed, or is in the possession, custody or control of another person or entity.

D. If FOX objects to any particular request, in whole or in part, FOX shall state the specific reason for the objection and the specific items being withheld based on the objection.

E. If any document(s) is withheld under a claim of privilege, FOX shall provide a "privilege log" with its responses, stating the specific basis of the privilege and describing the document(s) being withheld in sufficient detail to enable EMPIRE DISTRIBUTION to assess the applicability of the privilege including the following information:

1. the general nature of the document (letter, e-mail, memo, etc.);
2. the general subject matter of the document;
3. the date of the document;
4. the identity and position of its author;
5. the identity and position of all addressees and recipients; and
6. the location of the document.

### **DEFINITIONS**

The following definitions apply to each of the document requests:

A. The term “COMPLAINT” refers to the Complaint for Declaratory Relief filed by FOX on March 23, 2015 in this case, and any subsequent amendments thereto.

B. The term “COUNTERCLAIMS” refers to the Counterclaims filed by EMPIRE DISTRIBUTION against FOX on June 4, 2015 in this case, and any subsequent amendments thereto.

C. The term “FOX” refers collectively to Plaintiffs and Counter-Defendants Twentieth Century Fox Television, Twentieth Century Fox Film Corporation, and Fox Broadcasting Company, including their current or former officers, directors, employees, principals, agents, representatives, attorneys, accountants, parents, subsidiaries, affiliates and any other person or entity acting on their behalf.

D. The term “EMPIRE DISTRIBUTION” refers to Defendant and Counterclaimant Empire Distribution, Inc., including its current or former officers, directors, employees, principals, agents, representatives, attorneys, accountants, parents, subsidiaries, affiliates and any other person or entity acting on its behalf.

E. The term “*EMPIRE SERIES*” refers to FOX’s musical dramatic television series that is described in paragraph 10 of the COMPLAINT.

1 F. The term “*EMPIRE SERIES MUSIC*” refers to any music that is  
 2 produced, composed, performed and/or featured on or in connection with the  
 3 *EMPIRE SERIES* as described in paragraph 12 of the COMPLAINT.

4 G. The term “DOCUMENTS” is used in its customary and broadest sense  
 5 to include all writings, drawings, graphs, charts, photographs, sound recordings,  
 6 images, and other data or data compilations stored in any medium from which  
 7 information can be obtained, including all COMMUNICATIONS and  
 8 ELECTRONICALLY STORED INFORMATION.

9 H. The term “COMMUNICATIONS” refers to any transmission of  
 10 information between two or more persons including, but not limited to, letters,  
 11 facsimiles, correspondence, memos, e-mails, text messages, instant messages, and  
 12 social network communications including, but not limited to, messages and other  
 13 postings on social network sites such as Facebook and Twitter.

14 I. The term “ELECTRONICALLY STORED INFORMATION” shall  
 15 include any information stored in an electronic medium (such as electrical, digital,  
 16 magnetic, wireless, optical, electromagnetic or similar capabilities) including, but  
 17 not limited to, e-mail, computer files, internet files, voice-mail, photos, graphics,  
 18 text messages, instant messages, and social network communications including, but  
 19 not limited to, messages and other postings on social network sites such as  
 20 Facebook and Twitter.

## 21 **REQUESTS FOR PRODUCTION**

### 22 **REQUEST FOR PRODUCTION NO. 1:**

23 All DOCUMENTS reflecting, referring or relating to FOX’s creation and  
 24 development of the *EMPIRE SERIES*, from the time the series was first conceived  
 25 through the date of the first pilot episode on January 7, 2015, including, without  
 26 limitation, any notes, drafts, memos, treatments, scripts, scriptments, synopsis,  
 27 outlines, pitches or COMMUNICATIONS relating to the concepts, themes, plots,  
 28 premises, topics and/or characters of the series.

1 **REQUEST FOR PRODUCTION NO. 2:**

2 All COMMUNICATIONS between FOX and creators Lee Daniels or Danny  
3 Strong, or their agents/representatives, regarding the conception, creation or  
4 development of the *EMPIRE SERIES*, from the time the series was first conceived  
5 through the date of the first pilot episode on January 7, 2015.

6  
7 **REQUEST FOR PRODUCTION NO. 3:**

8 All DOCUMENTS reflecting, referring or relating to FOX's decision to use  
9 the "Empire" name for the *EMPIRE SERIES* including, without limitation, when,  
10 where, why, and by whom the name was chosen, any artistic relevance of the name  
11 to the show, any alternate names for the series that were considered, proposed or  
12 discussed, and all meetings or COMMUNICATIONS regarding the use of the name  
13 "Empire," or any alternate names, for the series.

14  
15 **REQUEST FOR PRODUCTION NO. 4:**

16 All DOCUMENTS reflecting, referring or relating to FOX's research,  
17 investigation or due diligence, prior to the date of the first pilot episode of the  
18 *EMPIRE SERIES* on January 7, 2015, regarding any use or trademarks of the name  
19 "Empire" by any other company.

20  
21 **REQUEST FOR PRODUCTION NO. 5:**

22 All DOCUMENTS reflecting, referring or relating to any research,  
23 investigation or due diligence by FOX regarding EMPIRE DISTRIBUTION,  
24 including, but not limited to, its use or trademark of the "Empire" name.

25  
26 **REQUEST FOR PRODUCTION NO. 6:**

27 All DOCUMENTS reflecting, referring or relating to any attempts by FOX to  
28 register the name "Empire", or any other name, mark, logo or symbol relating to the

1 *EMPIRE SERIES*, as a trademark, including any COMMUNICATIONS relating  
2 thereto.

3  
4 **REQUEST FOR PRODUCTION NO. 7:**

5 All DOCUMENTS reflecting, referring or relating to any consumer or  
6 market research surveys conducted by FOX regarding the “Empire” name.

7  
8 **REQUEST FOR PRODUCTION NO. 8:**

9 All DOCUMENTS reflecting, referring or relating to FOX’s alleged  
10 “intellectual property rights in and to the fictional television series *Empire* and the  
11 music therefrom, including copyright and trademark rights,” as alleged in paragraph  
12 3 of the COMPLAINT.

13  
14 **REQUEST FOR PRODUCTION NO. 9:**

15 All DOCUMENTS reflecting, referring or relating to FOX’s design of the  
16 “Empire” mark/logo for the *EMPIRE SERIES* including, without limitation, all  
17 drafts, sketches, designs, outlines, depictions or illustrations of the “Empire”  
18 mark/logo (including without limitation those depicted in paragraph 25 of the  
19 COMPLAINT and paragraph 21 of the COUNTERCLAIMS), any drafts, sketches,  
20 designs, outlines, depictions or illustrations of any alternate designs of the  
21 “Empire” mark/logo, and all COMMUNICATIONS relating thereto.

22  
23 **REQUEST FOR PRODUCTION NO. 10:**

24 All DOCUMENTS reflecting, referring or relating to FOX’s use of a city  
25 skyline graphic in conjunction with the “Empire” mark/logo (as depicted in  
26 paragraph 22 of the COUNTERCLAIMS) including, without limitation, all  
27 COMMUNICATIONS regarding such use of the city skyline graphic.  
28



**REQUEST FOR PRODUCTION NO. 11:**

All DOCUMENTS reflecting, referring or relating to any advertisements, promotions or marketing efforts by FOX using the “Empire” mark/logo.

**REQUEST FOR PRODUCTION NO. 12:**

All DOCUMENTS reflecting, referring or relating to the promotion, advertisement, or marketing of the *EMPIRE SERIES MUSIC* including, but not limited to, all contracts, agreements, or COMMUNICATIONS relating thereto.

**REQUEST FOR PRODUCTION NO. 13:**

All DOCUMENTS reflecting, referring or relating to the sale, license, distribution or release of the *EMPIRE SERIES MUSIC* in physical record stores, online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere else, including, but not limited to, all contracts, agreements, or COMMUNICATIONS relating thereto.

**REQUEST FOR PRODUCTION NO. 14:**

All COMMUNICATIONS between FOX and the main cast members of the *EMPIRE SERIES* or their agents/representatives, including, but not limited to, Terrance Howard, Taraji Henson, Trai Byers, Jussie Smollett, Bryshere Gray, Kaitlin Doubleday, Grace Gealey and Malik Yoba, regarding the concept of the series prior to the date of the first pilot episode on January 7, 2015.

**REQUEST FOR PRODUCTION NO. 15:**

All agreements, contracts or COMMUNICATIONS between FOX and any musicians who produce, perform or compose music for the *EMPIRE SERIES*, regarding the production, promotion, advertisement, sale, license, distribution or release of the *EMPIRE SERIES MUSIC*, including, but not limited to, Timbaland

(aka Timothy Mosely), Ne-Yo (aka Schaffer Chimere Smith), Jussie Smollett, Bryshere Gray, Gladys Knight, Anthony Hamilton, Sway Calloway, Raven Symone, Estelle, Mary J. Blige, Snoop Dogg, Rita Ora, Juicy J, Patti LaBelle and Charles Hamilton, or any of their agents/representatives.

**REQUEST FOR PRODUCTION NO. 16:**

All contracts, agreements, marketing plans and COMMUNICATIONS between FOX and Columbia Records regarding the promotion, advertisement, sale, license, distribution or release of *EMPIRE SERIES MUSIC*.

**REQUEST FOR PRODUCTION NO. 17:**

All internal FOX COMMUNICATIONS regarding the production, sale, license, promotion, advertisement, marketing, distribution or release of the *EMPIRE SERIES MUSIC*.

**REQUEST FOR PRODUCTION NO. 18:**

All DOCUMENTS reflecting, referring or relating to FOX's online account with Mediabase.

**REQUEST FOR PRODUCTION NO. 19:**

All DOCUMENTS reflecting, referring or relating to the performance, presentation or promotion of the *EMPIRE SERIES MUSIC* at radio stations, concerts, live performances, events, physical record stores and other venues.

**REQUEST FOR PRODUCTION NO. 20:**

Digital and hard copies of the *EMPIRE SERIES* including each season and episode to date.

1 **REQUEST FOR PRODUCTION NO. 21:**

2 Digital and hard copies of all *EMPIRE SERIES MUSIC*.

3  
4 **REQUEST FOR PRODUCTION NO. 22:**

5 All DOCUMENTS reflecting, referring or relating to any search or  
6 investigation of any record, including but not limited to the records of the United  
7 States Patent and Trademark Office, state trademark records, and business  
8 directories conducted by FOX that relate to the “Empire” mark or any similar name  
9 or mark used by FOX or anyone else, including any trademark search report for any  
10 mark or designation that consists of or includes the word “Empire” or any variant of  
11 that word.

12  
13 **REQUEST FOR PRODUCTION NO. 23:**

14 All DOCUMENTS reflecting, referring or relating to any legal opinion that  
15 FOX is relying on in this proceeding concerning its right to use the “Empire” mark  
16 or any similar mark or name.

17  
18 **REQUEST FOR PRODUCTION NO. 24:**

19 All DOCUMENTS reflecting, referring or relating to any agreements, written  
20 or oral, between FOX and anyone else concerning the use of the “Empire” mark.

21  
22 **REQUEST FOR PRODUCTION NO. 25:**

23 All DOCUMENTS reflecting, referring or relating to any of FOX’s present  
24 or prospective sales, marketing or business plans/strategies regarding products or  
25 services provided in connection with the “Empire” mark, including the *EMPIRE*  
26 *SERIES* and *EMPIRE SERIES MUSIC*.

1 **REQUEST FOR PRODUCTION NO. 26:**

2 All DOCUMENTS sufficient to identify every existing or intended good or  
3 service offered or sold by FOX in connection with the “Empire” mark, and the date  
4 on which each such good or service was first offered or sold, or will be offered or  
5 sold.

6  
7 **REQUEST FOR PRODUCTION NO. 27:**

8 All DOCUMENTS sufficient to show the channels of trade or distribution  
9 (e.g., retail, wholesale, Internet, catalog, etc.) through which FOX has sold or  
10 offered for sale, currently sell or offer for sale, or plan to sell or offer for sale any  
11 goods or services identified by the “Empire” mark.

12  
13 **REQUEST FOR PRODUCTION NO. 28:**

14 All DOCUMENTS sufficient to show all geographical areas (by city and  
15 state; and, if outside the United States, by country) in which FOX has sold, or  
16 offered for sale, goods or services under or in connection with the “Empire” mark.

17  
18 **REQUEST FOR PRODUCTION NO. 29:**

19 All DOCUMENTS reflecting, referring or relating to any study regarding  
20 actual or likely purchasers of goods or services offered for sale, sold, promoted, or  
21 advertised under or in association with the “Empire” mark.

22  
23 **REQUEST FOR PRODUCTION NO. 30:**

24 All DOCUMENTS sufficient to show each purchase of any good or service  
25 offered for sale, sold, promoted, or advertised under or in association with the  
26 “Empire” mark.

1 **REQUEST FOR PRODUCTION NO. 31:**

2 All DOCUMENTS reflecting, referring or relating to FOX's revenues,  
3 expenses, and profits relating to all goods and services sold, or offered for sale,  
4 under or in association with the "Empire" mark, including the *EMPIRE SERIES* and  
5 *EMPIRE SERIES MUSIC*.

6  
7 **REQUEST FOR PRODUCTION NO. 32:**

8 All DOCUMENTS reflecting, referring or relating to the total volume of  
9 sales for all goods and services sold under or in association with the "Empire"  
10 mark, including the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*.

11  
12 **REQUEST FOR PRODUCTION NO. 33:**

13 All DOCUMENTS reflecting, referring or relating to the amounts spent by  
14 FOX in each year to advertise, market and promote goods or services under or in  
15 association with the "Empire" mark or variations thereof, including the *EMPIRE*  
16 *SERIES* and *EMPIRE SERIES MUSIC*.

17  
18 **REQUEST FOR PRODUCTION NO. 34:**

19 All DOCUMENTS reflecting, referring or relating to any publicity or news  
20 relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*, including but not  
21 limited to press releases, articles, interviews, and public relations pieces appearing  
22 in the media, press, blogs, websites, internet, journals, newspapers, magazines or  
23 trade publications.

24  
25 **REQUEST FOR PRODUCTION NO. 35:**

26 All DOCUMENTS reflecting, referring or relating to anyone other than FOX  
27 that has used or is using the designation or word "Empire" in the music industry.  
28

1 **REQUEST FOR PRODUCTION NO. 36:**

2 All DOCUMENTS sufficient to identify by name and address each entity or  
3 individual authorized to sell, distribute, promote, advertise or market any goods or  
4 services identified by FOX's "Empire" mark, including in connection with the  
5 *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*.

6  
7 **REQUEST FOR PRODUCTION NO. 37:**

8 All DOCUMENTS reflecting, referring or relating to any cease-and-desist  
9 letter, demand, dispute, complaint, objection, protest, lawsuit, threatened lawsuit, or  
10 expression of concern by FOX to a third party, or by any third party to FOX,  
11 relating to FOX's or the third party's existing or intended use of the "Empire"  
12 mark.

13  
14 **REQUEST FOR PRODUCTION NO. 38:**

15 All DOCUMENTS reflecting, referring or relating to the date FOX first  
16 became aware of EMPIRE DISTRIBUTION and/or its use of the "Empire" name  
17 and any subsequent COMMUNICATIONS regarding EMPIRE DISTRIBUTION'S  
18 use of that mark.

19  
20 **REQUEST FOR PRODUCTION NO. 39:**

21 All DOCUMENTS reflecting, referring or relating any actual or potential,  
22 direct or indirect, competition between the products or services that FOX offers,  
23 offered, or intends to offer under its "Empire" mark and the products or services  
24 that EMPIRE DISTRIBUTION offers or offered under its "Empire" marks.

25  
26 **REQUEST FOR PRODUCTION NO. 40:**

27 All DOCUMENTS reflecting, referring or relating to any instance in which  
28 any person or entity made any statement, comment, inquiry or question regarding

1 any actual or potential association, affiliation, connection, correlation, relation or  
2 sponsorship between the *EMPIRE SERIES* and/or *EMPIRE SERIES MUSIC*, on the  
3 one hand, and EMPIRE DISTRIBUTION, on the other hand.

4  
5 **REQUEST FOR PRODUCTION NO. 41:**

6 All COMMUNICATIONS by or from FOX, FOX's customers or other  
7 persons, expressing any actual or potential confusion, association, affiliation,  
8 connection, correlation, relation or sponsorship between FOX and EMPIRE  
9 DISTRIBUTION and their respective goods or services.

10  
11 **REQUEST FOR PRODUCTION NO. 42:**

12 All COMMUNICATIONS by or from FOX, FOX's customers or other  
13 persons, expressing any lack of confusion, association, affiliation, connection,  
14 correlation, relation or sponsorship between FOX and EMPIRE DISTRIBUTION  
15 and their respective goods or services.

16  
17 **REQUEST FOR PRODUCTION NO. 43:**

18 All DOCUMENTS reflecting, referring or relating to whether or not FOX's  
19 use of the "Empire" mark does, may or will infringe, or cause any actual or  
20 potential confusion with, EMPIRE DISTRIBUTION'S "Empire" marks.

21  
22 **REQUEST FOR PRODUCTION NO. 44:**

23 All DOCUMENTS reflecting, referring or relating to any poll, survey, study,  
24 report, analysis, or evaluation done by FOX or on FOX's behalf that relates to the  
25 "Empire" mark.

1 **REQUEST FOR PRODUCTION NO. 45:**

2 All DOCUMENTS reflecting, referring or relating to any witness retained or  
3 specially employed by FOX to provide expert testimony in the case, including, but  
4 not limited to, all DOCUMENTS that reflect, refer, or relate to any opinions or  
5 conclusions of the expert, the basis of any such opinions or conclusions, any facts  
6 or data considered by the expert in forming any such opinions or conclusions, and  
7 all DOCUMENTS reviewed or relied upon by the expert in forming his/her  
8 opinions or conclusions.

9  
10 **REQUEST FOR PRODUCTION NO. 46:**

11 All COMMUNICATIONS between FOX's attorneys and any expert witness  
12 who is required to provide a report under Fed. R. Civ. P. 26(a)(2)(B), to the extent  
13 the COMMUNICATION relates to the compensation for the expert's study or  
14 testimony; identifies facts or data that FOX's attorneys provided and that the expert  
15 considered in forming his/her opinions to be expressed; or identifies assumptions  
16 that FOX's attorneys provided and that the expert relied on in forming the opinions  
17 to be expressed.

18  
19 **REQUEST FOR PRODUCTION NO. 47:**

20 All DOCUMENTS supporting the allegations in paragraph 1 of FOX's  
21 COMPLAINT.

22  
23 **REQUEST FOR PRODUCTION NO. 48:**

24 All DOCUMENTS supporting the allegations in paragraph 11 of FOX's  
25 COMPLAINT.



1 **REQUEST FOR PRODUCTION NO. 49:**

2 All DOCUMENTS supporting the allegations in paragraph 12 of FOX's  
3 COMPLAINT.

4  
5 **REQUEST FOR PRODUCTION NO. 50:**

6 All DOCUMENTS supporting the allegations in paragraph 20 of FOX's  
7 COMPLAINT.

8  
9 **REQUEST FOR PRODUCTION NO. 51:**

10 All DOCUMENTS supporting the allegations in paragraph 21 of FOX's  
11 COMPLAINT.

12  
13 **REQUEST FOR PRODUCTION NO. 52:**

14 All DOCUMENTS supporting the allegations in paragraphs 22 of FOX's  
15 COMPLAINT.

16  
17 **REQUEST FOR PRODUCTION NO. 53:**

18 All DOCUMENTS supporting the allegations in paragraph 23 of FOX's  
19 COMPLAINT.

20  
21 **REQUEST FOR PRODUCTION NO. 54:**

22 All DOCUMENTS supporting the allegations in paragraph 24 of FOX's  
23 COMPLAINT.

24  
25 **REQUEST FOR PRODUCTION NO. 55:**

26 All DOCUMENTS supporting the allegations in paragraphs 25 of FOX's  
27 COMPLAINT.

28

1 **REQUEST FOR PRODUCTION NO. 56:**

2 All DOCUMENTS supporting the allegations in paragraph 26 of FOX's  
3 COMPLAINT.

4  
5 **REQUEST FOR PRODUCTION NO. 57:**

6 All DOCUMENTS supporting the allegations in paragraph 27 of FOX's  
7 COMPLAINT.

8  
9 **REQUEST FOR PRODUCTION NO. 58:**

10 All DOCUMENTS upon which FOX's answer or affirmative defenses to the  
11 COUNTERCLAIMS are based including, but not limited to, its first affirmative  
12 defense purportedly based on the First Amendment to the United States  
13 Constitution.

14  
15 **REQUEST FOR PRODUCTION NO. 59:**

16 All DOCUMENTS identified or referenced in FOX's Initial Disclosures,  
17 pursuant to Fed. R. Civ. P. 26(a)(1).

18  
19 Dated: July 17, 2015

TROUTMAN SANDERS LLP

20  
21 By: 

22 Paul L. Gale  
23 Peter N. Villar  
24 John M. Bowler  
25 Michael D. Hobbs

26 *Attorneys for Defendant and*  
27 *Counterclaimant Empire*  
28 *Distribution Inc.*

# **Exhibit A**

## ESI Production Format

### Format of Production:

Both electronically stored information (“ESI”) and hard copy paper files should be produced in image format with the exception of certain ESI formats identified in the technical specifications below. Images shall be endorsed with a bates number at the page level accompanied with text files containing the searchable text and a delimited data load file containing associated document information and metadata for each document. The original native files shall be preserved.

ESI shall be collected in a manner that preserves metadata to the extent reasonably possible. ESI shall be produced in a format that is reasonably usable to same extent as the original native file. Duplicates shall be removed from all ESI productions in a manner that does not break up document families – in other words, emails shall be treated as duplicates only if they are identical both in their bodies and in all their attachments, and an email attachment shall not be treated as a duplicate merely because an identical copy of the document exists as a separate file. ESI duplicates shall be identified by using industry standard MD5 or SHA-1 algorithms to create and compare hash values for exact matches only. A duplicate custodian field [“DupCustodian”] shall be provided that identifies each custodian from whom the document was collected, but not produced because it was removed as a duplicate. Any duplicate ESI that is not produced shall be preserved.

Specific technical production format details are outlined below:

- Native ESI and paper shall be converted to black and white 300 dpi TIF format image files with Group IV compression and one TIF file per page. Upon written request, a Party shall produce color images for selected documents. Documents produced in color shall be produced as JPEG images, 200 dpi or higher and 24-bit color depth. Each color document image file shall be named with the unique Bates Number of the first page of the document in question followed by the file extension “JPG”;
- For documents whose native format is a spreadsheet, database, audio or video the original native files should be produced in addition to a single page TIF placeholder for each document. The placeholder should be endorsed with the original filename of the document, “Produced In Native Format,” and endorsed with the Bates number assigned to that document. The produced native file should be named with the Bates number assigned to that document;
- For documents whose native format is MS PowerPoint, the original native files and single page black and white Group IV TIF format image files shall be produced (with any comments shown);
- Each image file shall be named with its unique Bates number and branded with the Bates number and confidentiality designation (if any) on the face of the image in a location that does not cover up any of the documents original text or images;

- One text file per document shall be provided for all ESI and scanned paper documents containing searchable text for the document. Extracted full text shall be provided for ESI, and OCR text shall be provided for scanned paper. OCR generated text should only be used for ESI if extracted text is not available or if the document has been redacted. Text files shall be named with the beginning Bates number of the corresponding document and a path to the text file within the production should be provided in the data load file;
- An image identification file shall be provided containing a row of information for every image included in the production. The format of the file should be industry standard IPRO format (LFP), Concordance Image format (OPT) or other delimited file format using common ASCII (American Standard Code for Information Interchange) characters for field identification that includes one row of information for each image with fields for image Bates number, relative path to the image, image filename, page number, and document start identifier to designate the first page of a document;
- All document information and metadata for each document shall be produced in an ASCII (American Standard Code for Information Interchange) delimited data load file with one row for each document produced and shall include the document information and metadata identified in the table below. The format of the file shall be industry standard Concordance DAT file format or a delimited text file that uses ASCII character delimiters as follows: Field Delimiter = “” ASCII (020), Text Quote = “p” ASCII (254), Multi-Entry = “;” ASCII (059)

Document Information and Metadata To Be Produced

<i>Field</i>	<i>Data Type</i>	<i>Paper</i>	<i>Native Files &amp; Email Attachments</i>	<i>Email</i>
BegDoc	Integer - Text	Starting Bates #	Starting Bates #	Starting Bates #
EndDoc	Integer - Text	Ending Bates #	Ending Bates #	Ending Bates #
BegAttach	Integer - Text	Starting bates # of document family	Starting bates # of document family	Starting bates # of document family
EndAttach	Integer - Text	Ending bates # of document family	Ending bates # of document family	Ending bates # of document family
Custodian	Text	Name of person the document was collected from	Name of person the document was collected from	Name of person the document was collected from
DupCustodian	Text – paragraph Separate entries with “;”		All names of people the document was collected from even if removed from production as a duplicate	All names of people the document was collected from even if removed from production as a duplicate
Folder	Text		File path/folder structure for the original native file as it existed at the time of collection	File path/folder structure for the original native file as it existed at the time of collection. Should include full path and folder locations of email container files such as PST and NSF and the internal path of the email within

				those files
From	Text - paragraph			Sender of message
To	Text – paragraph Separate entries with “;”			Recipients of message
CC	Text – paragraph Separate entries with “;”			Copied recipients
BCC	Text – paragraph Separate entries with “;”			Blind copied recipients
Subject	Text - paragraph			Subject of message
DateSent	Date (mm/dd/yyyy)			Date message sent
TimeSent	Time (hh:mm:ss)			Time message sent
DateReceived	Date (mm/dd/yyyy)			Date message received
TimeRecv	Time (hh:mm:ss)			Time message received
FileName	Text - paragraph		Name of original file including extension	Name of original file including extension
FileExtension	Text		Extension of original file	Extension of original file
DateCreated	Date/Time (mm/dd/yyyy)		Date file was created	
DateModified	Date/Time (mm/dd/yyyy)		Date file was last modified	
Title	Text - paragraph		Title from document metadata	
Author	Text - paragraph		Document author from metadata	
Company	Text - paragraph		Document company or organization from metadata	
FileHash	Text		MD5 or SHA-1 Hash Value of document	MD5 or SHA-1 Hash Value of document
NativeLink	Text - paragraph		Path including filename to the associated native file if produced (Relative Path)	Path including filename to the associated native file if produced (Relative Path)
TextLink	Text - paragraph	Path including filename to the associated searchable text file (Relative Path)	Path including filename to the associated searchable text file (Relative Path)	Path including filename to the associated searchable text file (Relative Path)

**PROOF OF SERVICE**

I, Anabel Pineda, declare:

I am a citizen of the United States and employed in Orange County, CA. I am over the age of 18 and not a party to the within action; my business address is 5 Park Plaza, Suite 1400, Irvine, CA 92614-2545.

On July 17, 2015, I served the following document(s) described as:

**EMPIRE DISTRIBUTION, INC.'S REQUEST FOR PRODUCTION OF DOCUMENTS**

☐ **BY FACSIMILE TRANSMISSION:** As follows: The papers have been transmitted to a facsimile machine by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service. The copy of the notice or other paper served by facsimile transmission shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted or be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice of other paper was transmitted to the addressee(s).

☐ **BY MAIL:** As follows: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Irvine, CA, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY OVERNIGHT MAIL:** As follows: I am readily familiar with the firm's practice of collection and processing correspondence for overnight mailing. Under that practice, it would be deposited with overnight mail on that same day prepaid at Irvine, CA in the ordinary course of business.

On the following parties:

Molly M. Lens  
**O'MELVENY & MYERS LLP**  
1999 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-6035  
Email: mlens@omm.com

1 Marvin S. Putnam  
2 **LATHAM & WATKINS LLP**  
3 10250 Constellation Blvd., #300  
4 Los Angeles, California 90067-6203  
5 Email: marvin.putnam@lw.com

6 I declare that I am employed in the office of a member of the bar of this court at whose  
7 direction the service was made.

8 Executed on July 17, 2015, at Irvine, CA.

9 

10 \_\_\_\_\_  
11 Anabel Pineda



# EXHIBIT B

1 DANIEL M. PETROCELLI (S.B. #97802)  
dpetrocelli@omm.com  
2 MOLLY M. LENS (S.B. #283867)  
mlens@omm.com  
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1999 Avenue of the Stars, 7th Floor  
5 Los Angeles, California 90067-6035  
Telephone: (310) 553-6700  
6 Facsimile: (310) 246-6779

7 Attorneys for Twentieth Century Fox  
Television, a division of Twentieth Century  
8 Fox Film Corporation, and Fox Broadcasting  
Company  
9

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 **TWENTIETH CENTURY FOX**  
14 **TELEVISION, a division of**  
15 **TWENTIETH CENTURY FOX FILM**  
16 **CORPORATION, a Delaware company,**  
and **FOX BROADCASTING**  
**COMPANY, a Delaware corporation,**

17 **Plaintiffs,**

18 **v.**

19 **EMPIRE DISTRIBUTION, INC., a**  
20 **California corporation,**

21 **Defendant.**

22  
23 **And related counterclaims**  
24

**Case No. 2:15-cv-2158**

**Hon. Percy Anderson**

**FOX'S RESPONSE TO  
DEFENDANT'S FIRST SET OF  
REQUESTS FOR PRODUCTION  
OF DOCUMENTS**

25 **PROPOUNDING PARTY: EMPIRE DISTRIBUTION, INC.**

26 **RESPONDING PARTY: FOX**

27 **SET NO.: ONE**  
28

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Central District of California (the "Local Rules"), Plaintiffs and Counterclaim Defendants Twentieth Century Fox Television, a division of Twentieth Century Fox Film Corporation, and Fox Broadcasting Company (collectively, "Fox") hereby submit their responses and objections to Defendant and Counterclaimant Empire Distribution, Inc.'s First Set of Requests for Production of Documents ("Requests" and, individually, "Request"), served on July 17, 2015, as follows:

**GENERAL OBJECTIONS**

In addition to Fox's specific responses and objections to each Request as provided below, Fox makes the following general objections to the Requests:

1. Fox objects to each and every Request, definition, and instruction that purports to impose obligations beyond those required or permitted by the Federal Rules of Civil Procedure or the Local Rules.
2. Fox objects to each and every Request, definition, and instruction to the extent it contains inaccurate, incomplete, or misleading descriptions of the facts, persons, relationships, events, and pleadings underlying this action. The production of any information shall not constitute Fox's agreement with or acquiescence to any such description.
3. Fox objects to each and every Request to the extent it seeks information that is neither relevant to any claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence.
4. Fox objects to each and every Request to the extent it is vague, ambiguous, unclear, or fails to identify the requested documents with reasonable particularity as required by Federal Rule of Civil Procedure 34. To the extent that a Request requires subjective judgment on the part of Fox as to what information is requested, Fox will produce responsive, non-privileged documents according to its understanding of the Request.



1           5.     Fox objects to each and every Request to the extent it is overbroad,  
2 onerous, and unduly burdensome and, thus, outside the scope of permissible  
3 discovery.

4           6.     Fox objects to each and every Request to the extent it seeks  
5 information prior to the time Fox learned of the series that became *Empire* on the  
6 grounds that such requests are overbroad, beyond the scope of the allegations, and  
7 not reasonably calculated to lead to the discovery of admissible evidence. Fox  
8 further objects to each and every Request to the extent it seeks information after the  
9 time that Empire Distribution sent its initial objection to Fox in February 2014 on  
10 the ground that such requests are overbroad, beyond the scope of the allegations,  
11 seek information protected by the attorney-client privilege and work product  
12 doctrines and not reasonably calculated to lead to the discovery of admissible  
13 evidence. Fox will not produce documents outside of this relevant time period.

14           7.     Fox objects to each and every Request to the extent it seeks  
15 information that is a matter of public record, already in the possession of the  
16 defendant, or otherwise available to the public and the defendant.

17           8.     Fox objects to each and every Request to the extent it seeks the  
18 disclosure of information that is more easily obtainable by deposition.

19           9.     Fox objects to each and every Request to the extent it seeks cumulative  
20 or duplicative information.

21           10.    Fox objects to each and every Request to the extent it seeks the  
22 production of documents other than in Fox's possession, custody, or control.

23           11.    Fox objects to each and every Request to the extent it seeks the  
24 disclosure of information and/or production of documents protected by the  
25 attorney-client privilege, the attorney-work product doctrine, the common interest  
26 or joint defense privileges, rules and agreements governing privacy or  
27 confidentiality, or any other applicable privilege or protection recognized under  
28 statute or applicable case law. Inadvertent production by Fox of any information



1 protected by any applicable privilege or protection shall not constitute a waiver of  
2 the privilege or protection.

3 12. Fox objects to each and every Request to the extent it seeks Fox's  
4 sensitive, confidential, or proprietary business information. To the extent such  
5 documents are responsive, relevant, and not privileged, Fox will provide such  
6 documents after the Court enters an appropriate protective order in this case.

7 13. Fox objects to each and every Request to the extent it seeks  
8 information or the production of documents whose disclosure would otherwise be  
9 prohibited by applicable law, rule, regulation, or contract obligation.

10 14. Nothing contained in any response herein shall be deemed an  
11 admission, concession, or waiver by Fox as to the validity of any claim or defense  
12 asserted by Fox.

13 15. All objections as to the relevance, authenticity, or admissibility of any  
14 documents produced are expressly reserved by Fox.

15 16. To the extent that Fox responds to any of the Requests, it reserves the  
16 right to object on any grounds, at any time, to other discovery requests involving or  
17 relating to the subject matter of the Requests that Fox has responded to herein.

18 17. An objection or an undertaking to produce documents pursuant to a  
19 particular Request should not be construed to indicate that responsive documents  
20 actually exist.

21 18. Fox reserves all objections to the use of these responses. All such  
22 objections may be interposed by Fox at the time of trial or as otherwise required by  
23 the rules or order of the Court.

24 19. Fox objects to each and every Request to the extent it seeks the  
25 production of "all" documents in Fox's possession. To the extent that Fox  
26 undertakes to produce documents, Fox will conduct a reasonable search of  
27 custodians reasonably likely to have non-cumulative, responsive documents as  
28 qualified by Fox's objections and responses and, in the case of electronic



1 documents, Fox will use search terms reasonably expected to yield responsive  
2 documents. Fox further objects to the production of "all" documents when a subset  
3 of the documents would be sufficient to show the pertinent information.

4 20. Fox objects to each and every Request to the extent it seeks the  
5 production of documents restored from backup tapes or archived data sources that  
6 are not reasonably accessible. Fox will not search backup tapes or archived data  
7 sources.

8 21. Fox objects to Instruction A as unduly burdensome. Fox will meet and  
9 confer with defendant about the timing for the production of documents, including  
10 whether productions should be done on a rolling basis.

11 22. Fox objects to Instruction B as overly broad and unduly burdensome to  
12 the extent that it purports to impose obligations beyond those required by the  
13 Federal Rules of Civil Procedure or Local Rules. Fox will meet and confer about a  
14 reciprocal protocol for the production of documents.

15 23. Fox objects to Instruction E as premature. Fox will meet and confer  
16 with defendant about a protocol for privilege logs.

17 24. Fox objects to the definition of "Fox" as overly broad and unduly  
18 burdensome to the extent that such definition purports to extend to Twentieth  
19 Century Fox Film Corporation as a whole. Fox will not produce documents from  
20 any division of Twentieth Century Fox Film Corporation other than Twentieth  
21 Century Fox Television. Fox further objects to the definition of "Fox" as overly  
22 broad and unduly burdensome to the extent it purports to include "principals,  
23 agents, representatives, attorneys, accountants, parents, subsidiaries, affiliates, and  
24 any other person or entity acting on" the behalf of Twentieth Century Fox  
25 Television or Fox Broadcasting Company.

26 25. Fox objects to the definition of "*Empire Series Music*" as overly broad,  
27 unduly burdensome, and not reasonably calculated to lead to the discovery of  
28



1 admissible evidence to the extent that it includes music other than the Soundtrack  
2 Music, as defined in the complaint.

3 26. Fox objects to the definition of "Documents" as overly broad and  
4 unduly burdensome to the extent such definition purports to have Fox search for  
5 documents or information neither relevant to the subject matter of this action nor  
6 reasonably calculated to lead to the discovery of admissible evidence. Fox further  
7 objects to the definition to the extent that it purports to require Fox to produce  
8 identical copies of documents.

9 27. Fox objects to each and every Request to the extent it is premature in  
10 asking or requiring Fox to provide information that is the subject of expert  
11 disclosures under Federal Rule of Civil Procedure 26(a)(2) according to the  
12 Scheduling Order filed by the Court on July 23, 2015 (Dkt. 23).

13 28. Fox reserves the right to redact or exclude information from  
14 documents to protect unnecessary disclosure of nonresponsive or irrelevant  
15 sensitive, confidential, or proprietary business information.

16 29. As used in each objection and response made herein, "and" or "or"  
17 shall be construed both conjunctively and disjunctively.

18 30. Fox reserves the right to supplement and/or amend these responses.

19 31. The fact that Fox may reassert particular objections in responding to a  
20 Request should not be construed in any way as limiting the generality of the  
21 foregoing objections. The General Objections set forth above are asserted with  
22 respect to each and every Request set forth below.

### 23 **SPECIFIC OBJECTIONS AND RESPONSES**

24 In addition to the foregoing General Objections that are incorporated in each  
25 and every response set forth below, Fox makes the following specific responses and  
26 objections to the Requests:  
27  
28



1 **REQUEST FOR PRODUCTION NO. 1:**

2 All DOCUMENTS reflecting, referring or relating to FOX's creation and  
3 development of the *EMPIRE SERIES*, from the time the series was first conceived  
4 through the date of the first pilot episode on January 7, 2015, including, without  
5 limitation, any notes, drafts, memos, treatments, scripts, scriptments, synopsis,  
6 outlines, pitches or COMMUNICATIONS relating to the concepts, themes, plots,  
7 premises, topics and/or characters of the series.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

9 In addition to the foregoing General Objections, each of which is  
10 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
11 broad and unduly burdensome in seeking all documents reflecting, referring, or  
12 relating to Fox's creation and development of the *Empire* series, from the time the  
13 series was first conceived through the date of the first pilot episode on January 7,  
14 2015, without regard to whether such documents are relevant to the issues in this  
15 action; (b) is vague and ambiguous as to "the time the series was first conceived;"  
16 (c) seeks the production of documents immune from discovery under the attorney-  
17 client privilege or work product doctrine; and (d) seeks documents outside Fox's  
18 possession, custody, and control. Subject to, and without waiving, the General  
19 Objections and these specific objections, Fox will produce, based on a reasonable  
20 inquiry, responsive, non-privileged documents that reflect, refer, or relate to the use  
21 of the mark "Empire" in connection with Fox's creation and development of the  
22 *Empire* series from the time Fox learned of the series that became *Empire* through  
23 January 7, 2015, if any such documents are within Fox's possession, custody, or  
24 control.

25 **REQUEST FOR PRODUCTION NO. 2:**

26 All COMMUNICATIONS between FOX and creators Lee Daniels or Danny  
27 Strong, or their agents/representatives, regarding the conception, creation or  
28



1 development of the *EMPIRE SERIES*, from the time the series was first conceived  
2 through the date of the first pilot episode on January 7, 2015.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

4 In addition to the foregoing General Objections, each of which is  
5 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
6 broad and unduly burdensome in seeking all communications between Fox and  
7 creators Lee Daniels or Danny Strong, or their agents/representatives, regarding the  
8 conception, creation, or development of the *Empire* series, from the time the series  
9 was first conceived through the date of the first pilot episode on January 7, 2015,  
10 without regard to whether such documents are relevant to the issues in this action;  
11 (b) is vague and ambiguous as to "the time the series was first conceived"; (c) seeks  
12 the production of information outside of Fox's possession, custody, or control;  
13 (d) seeks information that violates the right of privacy of the talent with whom Fox  
14 works; and (e) is cumulative and duplicative of Request No. 1. Subject to, and  
15 without waiving, the General Objections and these specific objections, Fox will  
16 produce, based on a reasonable inquiry, responsive, non-privileged communications  
17 between Fox and creators Lee Daniels or Danny Strong, or their known  
18 agents/representatives, regarding the use of the mark "Empire" in connection with  
19 the conception, creation, or development of the *Empire* series, from the time Fox  
20 learned of the series that became *Empire* through January 7, 2015, if any such  
21 documents are within Fox's possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 3:**

23 All DOCUMENTS reflecting, referring or relating to FOX's decision to use  
24 the "Empire" name for the *EMPIRE SERIES* including, without limitation, when,  
25 where, why, and by whom the name was chosen, any artistic relevance of the name  
26 to the show, any alternate names for the series that were considered, proposed or  
27 discussed, and all meetings or COMMUNICATIONS regarding the use of the  
28 name "Empire," or any alternate names, for the series.



1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

2 In addition to the foregoing General Objections, each of which is  
3 incorporated herein by reference, Fox objects to this Request because it (a) seeks  
4 the production of documents immune from discovery under the attorney-client  
5 privilege or work product doctrine; (b) seeks information outside Fox's custody,  
6 possession, and control; and (c) is cumulative and duplicative of Request Nos. 1  
7 and 2. Subject to, and without waiving, the General Objections and these specific  
8 objections, Fox will produce, based on a reasonable inquiry, responsive, non-  
9 privileged documents reflecting, referring, or relating to Fox's decision to use the  
10 "Empire" name for the *Empire* series. With respect to alternate names for the series  
11 that were considered, proposed, or discussed, however, subject to, and without  
12 waiving the General Objections and these specific objections, Fox will only  
13 produce documents sufficient to show any alternative names, if any such non-  
14 privileged documents are within Fox's possession, custody, or control.

15 **REQUEST FOR PRODUCTION NO. 4:**

16 All DOCUMENTS reflecting, referring or relating to FOX's research,  
17 investigation or due diligence, prior to the date of the first pilot episode of the  
18 EMPIRE SERIES on January 7, 2015, regarding any use or trademarks of the name  
19 "Empire" by any other company.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

21 In addition to the foregoing General Objections, each of which is  
22 incorporated herein by reference, Fox objects to this Request because it (a) is vague  
23 and ambiguous as to what constitutes "use"; (b) seeks the production of documents  
24 immune from discovery under the attorney-client privilege or work product  
25 doctrine; and (c) is cumulative and duplicative of Request No. 1. Subject to, and  
26 without waiving, the General Objections and these specific objections, Fox will  
27 produce, based on a reasonable inquiry, responsive, non-privileged documents  
28 reflecting, referring, or relating to Fox's research, investigation, or due diligence



1 regarding any trademarks of the name "Empire" by any other company, prior to  
2 January 7, 2015, if any such documents are within Fox's possession, custody, or  
3 control.

4 **REQUEST FOR PRODUCTION NO. 5:**

5 All DOCUMENTS reflecting, referring or relating to any research,  
6 investigation or due diligence by FOX regarding EMPIRE DISTRIBUTION,  
7 including, but not limited to, its use or trademark of the "Empire" name.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

9 In addition to the foregoing General Objections, each of which is  
10 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
11 broad and unduly burdensome in seeking all documents reflecting, referring, or  
12 relating to any research, investigation, or due diligence by Fox regarding Empire  
13 Distribution, without regard to whether such documents are relevant to the issues in  
14 this action; (b) is vague and ambiguous as to what constitutes "use"; (c) seeks the  
15 production of documents immune from discovery under the attorney-client  
16 privilege or work product doctrine; and (d) is argumentative. Subject to, and  
17 without waiving, the General Objections and these specific objections, Fox will  
18 produce, based on a reasonable inquiry, responsive, non-privileged documents  
19 reflecting, referring, or relating to any research, investigation, or due diligence by  
20 Fox regarding Empire Distribution and *Empire*, if any such documents are within  
21 Fox's possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 6:**

23 All DOCUMENTS reflecting, referring or relating to any attempts by FOX to  
24 register the name "Empire", or any other name, mark, logo or symbol relating to the  
25 EMPIRE SERIES, as a trademark, including any COMMUNICATIONS relating  
26 thereto.



**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to any attempts by Fox to register the name "Empire" or any other name, mark, logo, or symbol relating to the *Empire* series, as a trademark, without regard to whether such documents are relevant to the issues in this action; (b) seeks the production of documents immune from discovery under the attorney-client privilege or work product doctrine; and (c) seeks information otherwise available to the public and the defendant. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents submitted to the United States Patent and Trademark Office regarding Fox's application to register "Empire" as a trademark and responses received thereto, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 7:**

All DOCUMENTS reflecting, referring or relating to any consumer or market research surveys conducted by FOX regarding the "Empire" name.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to any consumer or market research surveys conducted by Fox regarding the "Empire" name, without regard to whether such documents are relevant to the issues in this action; (b) seeks the production of documents immune from discovery under the attorney-client privilege or work product doctrine; and (c) seeks proprietary or confidential business information, trade secrets, or other highly sensitive information. Subject to, and without waiving, the General Objections and



1 these specific objections, Fox will produce, based on a reasonable inquiry,  
2 responsive, non-privileged consumer or market research surveys conducted by Fox  
3 regarding the "Empire" name, if any such documents are within Fox's possession,  
4 custody, or control.

5 **REQUEST FOR PRODUCTION NO. 8:**

6 All DOCUMENTS reflecting, referring or relating to FOX's alleged  
7 "intellectual property rights in and to the fictional television series *Empire* and the  
8 music therefrom, including copyright and trademark rights," as alleged in paragraph  
9 3 of the COMPLAINT.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

11 In addition to the foregoing General Objections, each of which is  
12 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
13 broad and unduly burdensome in seeking all documents reflecting, referring, or  
14 relating to Fox's alleged intellectual property rights in and to the fictional television  
15 series *Empire* and the music therefrom, including copyright and trademark rights,  
16 without regard to whether such documents are relevant to the issues in this action;  
17 (b) seeks the production of documents immune from discovery under the attorney-  
18 client privilege or work product doctrine; (c) seeks information otherwise available  
19 to the public and the defendant; and (d) is argumentative. Fox will not produce  
20 documents responsive to this Request.

21 **REQUEST FOR PRODUCTION NO. 9:**

22 All DOCUMENTS reflecting, referring or relating to FOX's design of the  
23 "Empire" mark/logo for the *EMPIRE SERIES* including, without limitation, all  
24 drafts, sketches, designs, outlines, depictions or illustrations of the "Empire"  
25 mark/logo (including without limitation those depicted in paragraph 25 of the  
26 COMPLAINT and paragraph 21 of the COUNTERCLAIMS), any drafts, sketches,  
27 designs, outlines, depictions or illustrations of any alternate designs of the  
28 "Empire" mark/logo, and all COMMUNICATIONS relating thereto.



**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to Fox's design of the "Empire" mark/logo for the *Empire* series, without regard to whether such documents are relevant to the issues in this action; and (b) seeks the production of documents immune from discovery under the attorney-client privilege or work product doctrine. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents relating to Fox's design of the "Empire" mark/logo for the *Empire* series, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 10:**

All DOCUMENTS reflecting, referring or relating to FOX's use of a city skyline graphic in conjunction with the "Empire" mark/logo (as depicted in paragraph 22 of the COUNTERCLAIMS) including, without limitation, all COMMUNICATIONS regarding such use of the city skyline graphic.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is argumentative; (b) seeks the production of documents immune from discovery under the attorney-client privilege or work product doctrine; and (c) is cumulative and duplicative of Request No. 9. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents relating to Fox's use of a city skyline graphic in conjunction with the "Empire" mark/logo, if any such documents are within Fox's possession, custody, or control.



**REQUEST FOR PRODUCTION NO. 11:**

All DOCUMENTS reflecting, referring or relating to any advertisements, promotions or marketing efforts by FOX using the “Empire” mark/logo.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to any advertisements, promotions, or marketing efforts by Fox using the “Empire” mark/logo, without regard to whether such documents are relevant to the issues in this action; and (b) is vague and ambiguous as to the meaning of “promotions or marketing efforts.” Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged exemplars of advertisements, promotions, or marketing efforts by Fox using the “Empire” mark/logo, if any such exemplars are within Fox’s possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 12:**

All DOCUMENTS reflecting, referring or relating to the promotion, advertisement, or marketing of the *EMPIRE SERIES MUSIC* including, but not limited to, all contracts, agreements, or COMMUNICATIONS relating thereto.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to the promotion, advertisement, or marketing of the *Empire* series music, without regard to whether such documents are relevant to the issues in this action; (b) seeks proprietary or confidential business information, trade secrets, or other highly sensitive information; and (c) is vague and ambiguous as to the meaning of “promotion” and “marketing.” Subject to, and without waiving, the General



1 Objections and these specific objections, Fox will produce, based on a reasonable  
2 inquiry, responsive, non-privileged exemplars of promotions, advertisements, or  
3 marketing of the *Empire* series music and executed contracts, if any such  
4 documents are within Fox's possession, custody, or control.

5 **REQUEST FOR PRODUCTION NO. 13:**

6 All DOCUMENTS reflecting, referring or relating to the sale, license,  
7 distribution or release of the *EMPIRE SERIES MUSIC* in physical record stores,  
8 online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere  
9 else, including, but not limited to, all contracts, agreements, or  
10 COMMUNICATIONS relating thereto.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

12 In addition to the foregoing General Objections, each of which is  
13 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
14 broad and unduly burdensome in seeking all documents reflecting, referring, or  
15 relating to the sale, license, distribution, or release of the *Empire* series music,  
16 without regard to whether such documents are relevant to the issues in this action;  
17 (b) seeks proprietary or confidential business information, trade secrets, or other  
18 highly sensitive information; and (c) seeks the production of documents immune  
19 from discovery under the attorney-client privilege or work product doctrine.  
20 Subject to, and without waiving, the General Objections and these specific  
21 objections, Fox will produce, based on a reasonable inquiry, responsive, non-  
22 privileged executed agreements relating to the sale, license, distribution, or release  
23 of the *Empire* series music, if any such documents are within Fox's possession,  
24 custody, or control.

25 **REQUEST FOR PRODUCTION NO. 14:**

26 All COMMUNICATIONS between FOX and the main cast members of the  
27 *EMPIRE SERIES* or their agents/representatives, including, but not limited to,  
28 Terrance Howard, Taraji Henson, Trai Byers, Jussie Smollett, Bryshere Gray,



1 Kaitlin Doubleday, Grace Gealey and Malik Yoba, regarding the concept of the  
2 series prior to the date of the first pilot episode on January 7, 2015.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

4 In addition to the foregoing General Objections, each of which is  
5 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
6 broad and unduly burdensome in seeking all communications between Fox and the  
7 main cast members of the *Empire* series, or their agents/representatives, regarding  
8 the concept of the series prior to January 7, 2015 without regard to whether such  
9 documents are relevant to the issues in this action; (b) is vague and ambiguous as to  
10 who the "main cast members" of the *Empire* series are; (c) seeks proprietary or  
11 confidential business information, trade secrets, or other highly sensitive  
12 information; (d) seeks the production of information outside of Fox's possession,  
13 custody, or control; and (e) seeks information that violates the right of privacy of  
14 the talent with whom Fox works. Subject to, and without waiving, the General  
15 Objections and these specific objections, Fox will produce, based on a reasonable  
16 inquiry, responsive, non-privileged communications between Fox and the main cast  
17 members of the *Empire* series, or their known agents/representatives, relating to the  
18 use of the mark "Empire" in connection with the *Empire* series, if any such  
19 communications are within Fox's possession, custody, or control.

20 **REQUEST FOR PRODUCTION NO. 15:**

21 All agreements, contracts or COMMUNICATIONS between FOX and any  
22 musicians who produce, perform or compose music for the *EMPIRE SERIES*,  
23 regarding the production, promotion, advertisement, sale, license, distribution or  
24 release of the *EMPIRE SERIES MUSIC*, including, but not limited to, Timbaland  
25 (aka Timothy Mosely), Ne-Yo (aka Schaffer Chimere Smith), Jussie Smollett,  
26 Bryshere Gray, Gladys Knight, Anthony Hamilton, Sway Calloway, Raven  
27 Symone, Estelle, Mary J. Blige, Snoop Dogg, Rita Ora, Juicy J, Patti LaBelle and  
28 Charles Hamilton, or any of their agents/representatives.



**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all agreements, contracts, or communications between Fox and any musicians who produce, perform, or compose music for the *Empire* series, regarding the production, promotion, advertisement, sale, license, distribution, or release of the *Empire* series music, without regard to whether such documents are relevant to the issues in this action; (b) is vague and ambiguous as to “promotion”; (c) seeks the production of documents immune from discovery under the attorney-client privilege or work product doctrine; (d) seeks proprietary or confidential business information, trade secrets, or other highly sensitive information; (e) seeks the production of information outside of Fox’s possession, custody, or control; (f) seeks information that violates the right of privacy of the talent with whom Fox works; and (g) is cumulative and duplicative of Request Nos. 12 and 14. Fox will not produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 16:**

All contracts, agreements, marketing plans and COMMUNICATIONS between FOX and Columbia Records regarding the promotion, advertisement, sale, license, distribution or release of *EMPIRE SERIES MUSIC*.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all contracts, agreements, marketing plans, and communications between Fox and Columbia Records regarding the promotion, advertisement, sale, license, distribution, or release of *Empire* series music, without regard to whether such documents are relevant to the issues in this action; (b) is vague and ambiguous as to “marketing plans” and “promotion”;



(c) seeks the production of documents immune from discovery under the attorney-client privilege or work product doctrine; (d) seeks proprietary or confidential business information, trade secrets, or other highly sensitive information; (e) seeks the production of information outside of Fox's possession, custody, or control; and (f) is cumulative and duplicative of Request No. 12. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged executed contracts or agreements, marketing plans, and communications between Fox and Columbia Records regarding the use of the "Empire" mark in connection with the promotion, advertisement, sale, license, distribution, or release of *Empire* series music, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 17:**

All internal FOX COMMUNICATIONS regarding the production, sale, license, promotion, advertisement, marketing, distribution or release of the *EMPIRE SERIES MUSIC*.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all internal Fox communications regarding the production, sale, license, promotion, advertisement, marketing, distribution, or release of the *Empire* series music, without regard to whether such communications are relevant to the issues in this action; (b) is vague and ambiguous as to "promotion" and "marketing"; (c) seeks the production of communications immune from discovery under the attorney-client privilege or work product doctrine; (d) seeks proprietary or confidential business information, trade secrets, or other highly sensitive information; and (e) is cumulative and duplicative of Request Nos. 12 and 13. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a



1 reasonable inquiry, responsive, non-privileged internal Fox communications  
2 regarding the use of the "Empire" mark/logo in connection with the production,  
3 sale, license, promotion, advertisement, marketing, distribution or release of the  
4 *Empire* series music, if any such communications are within Fox's possession,  
5 custody, or control.

6 **REQUEST FOR PRODUCTION NO. 18:**

7 All DOCUMENTS reflecting, referring or relating to FOX's online account  
8 with Mediabase.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

10 In addition to the foregoing General Objections, each of which is  
11 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
12 broad and unduly burdensome in seeking all documents reflecting, referring, or  
13 relating to Fox's online account with Mediabase, without regard to whether such  
14 documents are relevant to the issues in this action; (b) is vague and ambiguous as to  
15 "Mediabase"; (c) seeks proprietary or confidential business information, trade  
16 secrets, or other highly sensitive information; (d) seeks the production of  
17 information outside of Fox's possession, custody, or control; and (e) is  
18 argumentative. Fox will not produce documents responsive to this Request.

19 **REQUEST FOR PRODUCTION NO. 19:**

20 All DOCUMENTS reflecting, referring or relating to the performance,  
21 presentation or promotion of the *EMPIRE SERIES MUSIC* at radio stations,  
22 concerts, live performances, events, physical record stores and other venues.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

24 In addition to the foregoing General Objections, each of which is  
25 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
26 broad and unduly burdensome in seeking all documents reflecting, referring, or  
27 relating to the performance, presentation, or promotion of the *Empire* series music  
28 at radio stations, concerts, live performances, events, physical record stores, and



1 other venues, without regard to whether such documents are relevant to the issues  
2 in this action; (b) is vague and ambiguous as to "promotion" and "presentation"; (c)  
3 seeks the production of documents immune from discovery under the attorney-  
4 client privilege or work product doctrine; and (d) is cumulative and duplicative of  
5 Request No. 12. Subject to, and without waiving, the General Objections and these  
6 specific objections, Fox will produce, based on a reasonable inquiry, responsive,  
7 non-privileged documents sufficient to show any performances, presentations, or  
8 promotions of the *Empire* series music at radio stations, concerts, live  
9 performances, events, physical record stores, and other venues, if any such  
10 documents are within Fox's possession, custody, or control.

11 **REQUEST FOR PRODUCTION NO. 20:**

12 Digital and hard copies of the *EMPIRE SERIES* including each season and  
13 episode to date.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

15 In addition to the foregoing General Objections, each of which is  
16 incorporated herein by reference, Fox objects to this Request because digital and  
17 hard copies of the *Empire* series are available to the public and the defendant. Fox  
18 will not produce digital or hard copies of the *Empire* series in response to this  
19 Request.

20 **REQUEST FOR PRODUCTION NO. 21:**

21 Digital and hard copies of all *EMPIRE SERIES MUSIC*.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

23 In addition to the foregoing General Objections, each of which is  
24 incorporated herein by reference, Fox objects to this Request because digital and  
25 hard copies of all *Empire* series music are available to the public and the defendant.  
26 Fox will not produce digital or hard copies of *Empire* series music in response to  
27 this Request.



1 **REQUEST FOR PRODUCTION NO. 22:**

2 All DOCUMENTS reflecting, referring or relating to any search or  
3 investigation of any record, including but not limited to the records of the United  
4 States Patent and Trademark Office, state trademark records, and business  
5 directories conducted by FOX that relate to the "Empire" mark or any similar name  
6 or mark used by FOX or anyone else, including any trademark search report for any  
7 mark or designation that consists of or includes the word "Empire" or any variant of  
8 that word.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

10 In addition to the foregoing General Objections, each of which is  
11 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
12 broad and unduly burdensome in seeking all documents reflecting, referring, or  
13 relating to any search or investigation of any record by Fox that relates to the  
14 "Empire" mark or any similar name or mark used by Fox or anyone else, without  
15 regard to whether such documents are relevant to the issues in this action; (b) is  
16 vague and ambiguous as to the meaning of "used," "record," and "similar"; (c)  
17 seeks the production of documents immune from discovery under the attorney-  
18 client privilege and work product doctrine; and (d) is cumulative and duplicative of  
19 Request No. 4. Subject to, and without waiving, the General Objections and these  
20 specific objections, Fox will produce, based on a reasonable inquiry, responsive,  
21 non-privileged documents relating to any search or investigation of any record by  
22 Fox that relates to the "Empire" mark, if any such documents are within Fox's  
23 possession, custody, or control.

24 **REQUEST FOR PRODUCTION NO. 23:**

25 All DOCUMENTS reflecting, referring or relating to any legal opinion that  
26 FOX is relying on in this proceeding concerning its right to use the "Empire" mark  
27 or any similar mark or name.  
28



**RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to any legal opinions that Fox is relying on in this proceeding concerning its right to use the "Empire" mark or any similar mark or name, without regard to whether such documents are relevant to the issues in this action; (b) is vague and ambiguous as to "legal opinion," "use," and "similar"; and (c) seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, any responsive legal opinions that Fox intends to rely on in this proceeding concerning its right to use the "Empire" mark, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 24:**

All DOCUMENTS reflecting, referring or relating to any agreements, written or oral, between FOX and anyone else concerning the use of the "Empire" mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to any agreements, written or oral, between Fox and anyone else concerning the use of the "Empire" mark, without regard to whether such documents are relevant to the issues in this action; (b) is vague and ambiguous as to "use"; (c) seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine; and (d) seeks proprietary or confidential business information, trade secrets, or other highly sensitive information. Subject to, and without waiving, the General Objections and these



1 specific objections, Fox will produce, based on a reasonable inquiry, responsive,  
2 non-privileged executed agreements between Fox and anyone else concerning the  
3 use of the "Empire" mark, if any such documents are within Fox's possession,  
4 custody, or control.

5 **REQUEST FOR PRODUCTION NO. 25:**

6 All DOCUMENTS reflecting, referring or relating to any of FOX's present  
7 or prospective sales, marketing or business plans/strategies regarding products or  
8 services provided in connection with the "Empire" mark, including the *EMPIRE*  
9 *SERIES* and *EMPIRE SERIES MUSIC*.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

11 In addition to the foregoing General Objections, each of which is  
12 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
13 broad and unduly burdensome in seeking all documents reflecting, referring, or  
14 relating to any of Fox's present or prospective sales, marketing, or business  
15 plans/strategies regarding products or services provided in connection with the  
16 "Empire" mark, without regard to whether such documents are relevant to the  
17 issues in this action; (b) seeks the production of documents immune from discovery  
18 under the attorney-client privilege and work product doctrine; and (c) seeks  
19 proprietary or confidential business information, trade secrets, or other highly  
20 sensitive information. Subject to, and without waiving, the General Objections and  
21 these specific objections, Fox will produce, based on a reasonable inquiry,  
22 responsive, non-privileged documents sufficient to show sales of products or  
23 services provided bearing the "Empire" mark, if any such documents are within  
24 Fox's possession, custody, or control.

25 **REQUEST FOR PRODUCTION NO. 26:**

26 All DOCUMENTS sufficient to identify every existing or intended good or  
27 service offered or sold by FOX in connection with the "Empire" mark, and the date  
28



1 on which each such good or service was first offered or sold, or will be offered or  
2 sold.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

4 In addition to the foregoing General Objections, each of which is  
5 incorporated herein by reference, Fox objects to this Request because it (a) seeks  
6 proprietary or confidential business information, trade secrets, or other highly  
7 sensitive information; and (b) seeks information otherwise available to the public  
8 and the defendant. Subject to, and without waiving, the General Objections and  
9 these specific objections, Fox will produce, based on a reasonable inquiry,  
10 responsive, non-privileged documents sufficient to identify every existing or  
11 intended good or service offered or sold by Fox in connection with the "Empire"  
12 mark, and the date on which each such good or service was first offered or sold or  
13 will be offered or sold, if any such documents are within Fox's possession, custody,  
14 or control.

15 **REQUEST FOR PRODUCTION NO. 27:**

16 All DOCUMENTS sufficient to show the channels of trade or distribution  
17 (e.g., retail, wholesale, Internet, catalog, etc.) through which FOX has sold or  
18 offered for sale, currently sell or offer for sale, or plan to sell or offer for sale any  
19 goods or services identified by the "Empire" mark.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

21 In addition to the foregoing General Objections, each of which is  
22 incorporated herein by reference, Fox objects to this Request because it (a) seeks  
23 proprietary or confidential business information, trade secrets, or other highly  
24 sensitive information; and (b) seeks information otherwise available to the public  
25 and the defendant. Subject to, and without waiving, the General Objections and  
26 these specific objections, Fox will produce, based on a reasonable inquiry,  
27 responsive, non-privileged documents sufficient to show the channels of trade or  
28 distribution through which Fox has sold or offered for sale or currently sells or



1 offers for sale or plans to sell or offer for sale any goods or services identified by  
2 the "Empire" mark, if any such documents are within Fox's possession, custody, or  
3 control.

4 **REQUEST FOR PRODUCTION NO. 28:**

5 All DOCUMENTS sufficient to show all geographical areas (by city and  
6 state; and, if outside the United States, by country) in which FOX has sold, or  
7 offered for sale, goods or services under or in connection with the "Empire" mark.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

9 In addition to the foregoing General Objections, each of which is  
10 incorporated herein by reference, Fox objects to this Request because it seeks  
11 information otherwise available to the public and the defendant. Subject to, and  
12 without waiving, the General Objections and these specific objections, Fox will  
13 produce, based on a reasonable inquiry, responsive, non-privileged documents  
14 sufficient to show all geographical areas (by state; and, if outside the United States,  
15 by country) in which Fox has sold, or offered for sale, goods or services under or in  
16 connection with the "Empire" mark, if any such documents are within Fox's  
17 possession, custody, or control.

18 **REQUEST FOR PRODUCTION NO. 29:**

19 All DOCUMENTS reflecting, referring or relating to any study regarding  
20 actual or likely purchasers of goods or services offered for sale, sold, promoted, or  
21 advertised under or in association with the "Empire" mark.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

23 In addition to the foregoing General Objections, each of which is  
24 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
25 broad and unduly burdensome in seeking all documents reflecting, referring, or  
26 relating to any study regarding actual or likely purchasers of goods or services  
27 offered for sale, sold, promoted, or advertised under or in association with the  
28 "Empire" mark, without regard to whether such documents are relevant to the



1 issues in this action; (b) is vague and ambiguous as to “promoted” and “in  
2 association with”; (c) seeks the production of documents immune from discovery  
3 under the attorney-client privilege and work product doctrine; and (d) seeks  
4 proprietary or confidential business information, trade secrets, or other highly  
5 sensitive information. Subject to, and without waiving, the General Objections and  
6 these specific objections, Fox will produce, based on a reasonable inquiry,  
7 responsive, non-privileged studies regarding actual or likely purchasers of goods or  
8 services offered for sale, sold, promoted, or advertised with the “Empire” mark, if  
9 any such documents are within Fox’s possession, custody, or control.

10 **REQUEST FOR PRODUCTION NO. 30:**

11 All DOCUMENTS sufficient to show each purchase of any good or service  
12 offered for sale, sold, promoted, or advertised under or in association with the  
13 “Empire” mark.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

15 In addition to the foregoing General Objections, each of which is  
16 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
17 broad and unduly burdensome in seeking all documents sufficient to show each  
18 purchase of any good or service offered for sale, sold, promoted, or advertised  
19 under or in association with the “Empire” mark, without regard to whether such  
20 documents are relevant to the issues in this action; (b) is vague and ambiguous as to  
21 “promoted” and “in association with”; (c) seeks the production of documents  
22 immune from discovery under the attorney-client privilege and work product  
23 doctrine; and (d) seeks proprietary or confidential business information, trade  
24 secrets, or other highly sensitive information. Fox will not produce documents in  
25 response to this Request.

26 **REQUEST FOR PRODUCTION NO. 31:**

27 All DOCUMENTS reflecting, referring or relating to FOX’s revenues,  
28 expenses, and profits relating to all goods and services sold, or offered for sale,



1 under or in association with the "Empire" mark, including the *EMPIRE SERIES* and  
2 *EMPIRE SERIES MUSIC*.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

4 In addition to the foregoing General Objections, each of which is  
5 incorporated herein by reference, Fox objects to this Request because it (a) is vague  
6 and ambiguous as to "in association with"; and (b) seeks proprietary or confidential  
7 business information, trade secrets, or other highly sensitive information. Subject  
8 to, and without waiving, the General Objections and these specific objections, Fox  
9 will produce, based on a reasonable inquiry, responsive, non-privileged documents  
10 sufficient to show Fox's revenues, expenses, and profits relating to goods and  
11 services sold, or offered for sale, with the "Empire" mark, if any such documents  
12 are within Fox's possession, custody, or control.

13 **REQUEST FOR PRODUCTION NO. 32:**

14 All DOCUMENTS reflecting, referring or relating to the total volume of  
15 sales for all goods and services sold under or in association with the "Empire"  
16 mark, including the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

18 In addition to the foregoing General Objections, each of which is  
19 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
20 broad and unduly burdensome in seeking all documents reflecting, referring, or  
21 relating to the total volume of sales for all goods and services sold under or in  
22 association with the "Empire" mark; (b) is vague and ambiguous as to "in  
23 association with"; and (c) seeks proprietary or confidential business information,  
24 trade secrets, or other highly sensitive information. Subject to, and without  
25 waiving, the General Objections and these specific objections, Fox will produce,  
26 based on a reasonable inquiry, responsive, non-privileged documents sufficient to  
27 show the total volume of sales for all goods and services sold with the "Empire"  
28 mark, if any such documents are within Fox's possession, custody, or control.



1 **REQUEST FOR PRODUCTION NO. 33:**

2 All DOCUMENTS reflecting, referring or relating to the amounts spent by  
3 FOX in each year to advertise, market and promote goods or services under or in  
4 association with the "Empire" mark or variations thereof, including the *EMPIRE*  
5 *SERIES* and *EMPIRE SERIES MUSIC*.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

7 In addition to the foregoing General Objections, each of which is  
8 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
9 broad and unduly burdensome in seeking all documents reflecting, referring, or  
10 relating to the amounts spent by Fox in each year to advertise, market, and promote  
11 goods or services under or in association with the "Empire" mark or variations  
12 thereof; (b) is vague and ambiguous as to "market and promote," "in association  
13 with," "variations thereof"; (c) seeks the production of documents immune from  
14 discovery under the attorney-client privilege and work product doctrine; and (d)  
15 seeks proprietary or confidential business information, trade secrets, or other highly  
16 sensitive information. Subject to, and without waiving, the General Objections and  
17 these specific objections, Fox will produce, based on a reasonable inquiry,  
18 responsive, non-privileged documents sufficient to show the amount spent by Fox  
19 each year to advertise, market, and promote goods and services with the "Empire"  
20 mark, if any such documents are within Fox's possession, custody, or control.

21 **REQUEST FOR PRODUCTION NO. 34:**

22 All DOCUMENTS reflecting, referring or relating to any publicity or news  
23 relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*, including but not  
24 limited to press releases, articles, interviews, and public relations pieces appearing  
25 in the media, press, blogs, websites, internet, journals, newspapers, magazines or  
26 trade publications.



**RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to any publicity or news relating to the *Empire* series and *Empire* series music, without regard to whether such documents are relevant to the issues in this action; (b) seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine; and (c) seeks information otherwise available to the public and the defendant. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents not otherwise available to the public and the defendant relating to any publicity or news relating to the use of the “Empire” mark in connection with the Empire series and Empire series music, if any such documents are within Fox’s possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 35:**

All DOCUMENTS reflecting, referring or relating to anyone other than FOX that has used or is using the designation or word “Empire” in the music industry.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is overly broad and unduly burdensome in seeking all documents reflecting, referring, or relating to anyone other than Fox that has used or is using the designation or word “Empire” in the music industry, without regard to whether such documents are relevant to the issues in this action; (b) is vague and ambiguous as to “has used or is using” and “designation”; (c) seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine; (d) seeks information otherwise available to the public and the defendant; and (e) is



1 cumulative and duplicative of Request Nos. 4 and 5. Subject to, and without  
2 waiving, the General Objections and these specific objections, Fox will produce,  
3 based on a reasonable inquiry, responsive, non-privileged documents relating to  
4 anyone other than Fox that has used or is using the designation or word "Empire" in  
5 the music industry, if any such documents are within Fox's possession, custody, or  
6 control.

7 **REQUEST FOR PRODUCTION NO. 36:**

8 All DOCUMENTS sufficient to identify by name and address each entity or  
9 individual authorized to sell, distribute, promote, advertise or market any goods or  
10 services identified by FOX's "Empire" mark, including in connection with the  
11 *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

13 In addition to the foregoing General Objections, each of which is  
14 incorporated herein by reference, Fox objects to this Request because it seeks the  
15 production of documents immune from discovery under the attorney-client  
16 privilege and work product doctrine. Subject to, and without waiving, the General  
17 Objections and these specific objections, Fox will produce, based on a reasonable  
18 inquiry, responsive, non-privileged documents sufficient to identify by name and  
19 address each entity or individual authorized to sell, distribute, promote, advertise, or  
20 market any goods or services identified by Fox's "Empire" mark, if any such  
21 documents are within Fox's possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 37:**

23 All DOCUMENTS reflecting, referring or relating to any cease-and-desist  
24 letter, demand, dispute, complaint, objection, protest, lawsuit, threatened lawsuit, or  
25 expression of concern by FOX to a third party, or by any third party to FOX,  
26 relating to FOX's or the third party's existing or intended use of the "Empire"  
27 mark.  
28



**RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is vague and ambiguous as to “use”; and (b) seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged communications sent to a third-party regarding any objection or concern by Fox regarding that third-party’s existing or intended use of the “Empire” mark, if any such documents are within Fox’s possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 38:**

All DOCUMENTS reflecting, referring or relating to the date FOX first became aware of EMPIRE DISTRIBUTION and/or its use of the “Empire” name and any subsequent COMMUNICATIONS regarding EMPIRE DISTRIBUTION’S use of that mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is vague and ambiguous as to “use”; (b) seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine; and (c) is argumentative. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents relating to the date Fox first became aware of Empire Distribution and/or its use of the “Empire” name and any subsequent communications regarding Empire Distribution’s use of the name, if any such documents are within Fox’s possession, custody, or control.



1 **REQUEST FOR PRODUCTION NO. 39:**

2 All DOCUMENTS reflecting, referring or relating any actual or potential,  
3 direct or indirect, competition between the products or services that FOX offers,  
4 offered, or intends to offer under its "Empire" mark and the products or services  
5 that EMPIRE DISTRIBUTION offers or offered under its "Empire" marks.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

7 In addition to the foregoing General Objections, each of which is  
8 incorporated herein by reference, Fox objects to this Request because it (a) seeks  
9 the production of documents immune from discovery under the attorney-client  
10 privilege and work product doctrine; (b) seeks proprietary or confidential business  
11 information, trade secrets, or other highly sensitive information; and (c) is  
12 argumentative. Subject to, and without waiving, the General Objections and these  
13 specific objections, Fox will produce, based on a reasonable inquiry, responsive,  
14 non-privileged documents reflecting any actual or potential, direct or indirect,  
15 competition between the products or services that Fox offers, offered or intends to  
16 offer under its "Empire" mark and the products or services that Empire Distribution  
17 offers or offered with the "Empire" name, if any such documents are within Fox's  
18 possession, custody, or control.

19 **REQUEST FOR PRODUCTION NO. 40:**

20 All DOCUMENTS reflecting, referring or relating to any instance in which  
21 any person or entity made any statement, comment, inquiry or question regarding  
22 any actual or potential association, affiliation, connection, correlation, relation or  
23 sponsorship between the *EMPIRE SERIES* and/or *EMPIRE SERIES MUSIC*, on the  
24 one hand, and EMPIRE DISTRIBUTION, on the other hand.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

26 Subject to, and without waiving, the General Objections, Fox will produce,  
27 based on a reasonable inquiry, responsive, non-privileged documents relating to any  
28 instance in which any person or entity made any statement, comment, inquiry, or



1 question regarding any actual or potential association, affiliation, connection,  
2 correlation, relation, or sponsorship between the *Empire* series and/or *Empire* series  
3 music, on the one hand, and Empire Distribution, on the other hand, if any such  
4 documents are within Fox's possession, custody, or control.

5 **REQUEST FOR PRODUCTION NO. 41:**

6 All COMMUNICATIONS by or from FOX, FOX's customers or other  
7 persons, expressing any actual or potential confusion, association, affiliation,  
8 connection, correlation, relation or sponsorship between FOX and EMPIRE  
9 DISTRIBUTION and their respective goods or services.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

11 In addition to the foregoing General Objections, each of which is  
12 incorporated herein by reference, Fox objects to this Request because it (a) seeks  
13 the production of information outside of Fox's possession, custody, or control; (b)  
14 seeks information that violates the right of privacy of Fox's customers; and (c) is  
15 cumulative and duplicative of Request No. 40. Subject to, and without waiving, the  
16 General Objections and these specific objections, Fox will produce, based on a  
17 reasonable inquiry, responsive, non-privileged communications by or from Fox,  
18 Fox's customers or other persons, expressing any actual or potential confusion,  
19 association, affiliation, connection, correlation, relation, or sponsorship between  
20 Fox and Empire Distribution and their respective goods or services, if any such  
21 documents are within Fox's possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 42:**

23 All COMMUNICATIONS by or from FOX, FOX's customers or other  
24 persons, expressing any lack of confusion, association, affiliation, connection,  
25 correlation, relation or sponsorship between FOX and EMPIRE DISTRIBUTION  
26 and their respective goods or services.



**RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine; (b) seeks the production of information outside of Fox's possession, custody, or control; and (c) seeks information that violates the right of privacy of Fox's customers. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged communications by or from Fox, Fox's customers or other persons, expressing any lack of confusion, association, affiliation, connection, correlation, relation, or sponsorship between Fox and Empire Distribution and their respective goods or services, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 43:**

All DOCUMENTS reflecting, referring or relating to whether or not FOX's use of the "Empire" mark does, may or will infringe, or cause any actual or potential confusion with, EMPIRE DISTRIBUTION'S "Empire" marks.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) is vague and ambiguous as to "use"; (b) seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine; (c) is cumulative and duplicative of Request No. 23; and (d) is argumentative. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents relating to whether Fox's use of the "Empire" mark does, may, or will infringe, or cause any actual or potential confusion with, Empire Distribution, if any such documents are within Fox's possession, custody, or control.



1 **REQUEST FOR PRODUCTION NO. 44:**

2 All DOCUMENTS reflecting, referring or relating to any poll, survey, study,  
3 report, analysis, or evaluation done by FOX or on FOX's behalf that relates to the  
4 "Empire" mark.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

6 In addition to the foregoing General Objections, each of which is  
7 incorporated herein by reference, Fox objects to this Request because it (a) is overly  
8 broad and unduly burdensome in seeking all documents reflecting, referring, or  
9 relating to any poll, survey, study, report, analysis, or evaluation done by Fox or on  
10 Fox's behalf that relates to the "Empire" mark, without regard to whether such  
11 documents are relevant to the issues in this action; (b) seeks the production of  
12 documents immune from discovery under the attorney-client privilege and work  
13 product doctrine; (c) seeks proprietary or confidential business information, trade  
14 secrets, or other highly sensitive information; and (d) is cumulative and duplicative  
15 of Request No. 7. Subject to, and without waiving, the General Objections and  
16 these specific objections, Fox will produce, based on a reasonable inquiry,  
17 responsive, non-privileged polls, surveys, studies, reports, analyses, or evaluations  
18 done by Fox or on Fox's behalf that relate to confusion between the "Empire" mark  
19 and Empire Distribution, if any such documents are within Fox's possession,  
20 custody, or control.

21 **REQUEST FOR PRODUCTION NO. 45:**

22 All DOCUMENTS reflecting, referring or relating to any witness retained or  
23 specially employed by FOX to provide expert testimony in the case, including, but  
24 not limited to, all DOCUMENTS that reflect, refer, or relate to any opinions or  
25 conclusions of the expert, the basis of any such opinions or conclusions, any facts  
26 or data considered by the expert in forming any such opinions or conclusions, and  
27 all DOCUMENTS reviewed or relied upon by the expert in forming his/her  
28 opinions or conclusions.



1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

2 In addition to the foregoing General Objections, each of which is  
3 incorporated herein by reference, Fox objects to this Request because it (a) seeks  
4 the production of documents immune from discovery under the attorney-client  
5 privilege and work product doctrine; (b) seeks documents protected from disclosure  
6 by Rule 26; and (c) is premature in asking or requiring Fox to provide information  
7 that is the subject of expert disclosures under Rule 26(a)(2), according to the  
8 Scheduling Order filed by the Court on July 23, 2015 (Dkt. 23). Fox will comply  
9 with its obligations under Rule 26 and the Court's Scheduling Order.

10 **REQUEST FOR PRODUCTION NO. 46:**

11 All COMMUNICATIONS between FOX's attorneys and any expert witness  
12 who is required to provide a report under Fed. R. Civ. P. 26(a)(2)(B), to the extent  
13 the COMMUNICATION relates to the compensation for the expert's study or  
14 testimony; identifies facts or data that FOX's attorneys provided and that the expert  
15 considered in forming his/her opinions to be expressed; or identifies assumptions  
16 that FOX's attorneys provided and that the expert relied on in forming the opinions  
17 to be expressed.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

19 In addition to the foregoing General Objections, each of which is  
20 incorporated herein by reference, Fox objects to this Request because it is  
21 premature in asking or requiring Fox to provide information that is the subject of  
22 expert disclosures under Federal Rule of Civil Procedure 26(a)(2), according to the  
23 Scheduling Order filed by the Court on July 23, 2015 (Dkt. 23). Fox will comply  
24 with its obligations under Rule 26 and the Court's Scheduling Order.

25 **REQUEST FOR PRODUCTION NO. 47:**

26 All DOCUMENTS supporting the allegations in paragraph 1 of FOX's  
27 COMPLAINT.  
28



**RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents supporting the allegations in paragraph 1 of Fox's Complaint, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 48:**

All DOCUMENTS supporting the allegations in paragraph 11 of FOX's COMPLAINT.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 48:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents supporting the allegations in paragraph 11 of Fox's Complaint, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 49:**

All DOCUMENTS supporting the allegations in paragraph 12 of FOX's COMPLAINT.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 49:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it seeks the production of documents immune from discovery under the attorney-client



1 privilege and work product doctrine. Subject to, and without waiving, the General  
2 Objections and these specific objections, Fox will produce, based on a reasonable  
3 inquiry, responsive, non-privileged documents supporting the allegations in  
4 paragraph 12 of Fox's Complaint, if any such documents are within Fox's  
5 possession, custody, or control.

6 **REQUEST FOR PRODUCTION NO. 50:**

7 All DOCUMENTS supporting the allegations in paragraph 20 of FOX's  
8 COMPLAINT.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 50:**

10 In addition to the foregoing General Objections, each of which is  
11 incorporated herein by reference, Fox objects to this Request because it seeks the  
12 production of documents immune from discovery under the attorney-client  
13 privilege and work product doctrine. Subject to, and without waiving, the General  
14 Objections and these specific objections, Fox will produce, based on a reasonable  
15 inquiry, responsive, non-privileged documents supporting the allegations in  
16 paragraph 20 of Fox's Complaint, if any such documents are within Fox's  
17 possession, custody, or control.

18 **REQUEST FOR PRODUCTION NO. 51:**

19 All DOCUMENTS supporting the allegations in paragraph 21 of FOX's  
20 COMPLAINT.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 51:**

22 In addition to the foregoing General Objections, each of which is  
23 incorporated herein by reference, Fox objects to this Request because it seeks the  
24 production of documents immune from discovery under the attorney-client  
25 privilege and work product doctrine. Subject to, and without waiving, the General  
26 Objections and these specific objections, Fox will produce, based on a reasonable  
27 inquiry, responsive, non-privileged documents supporting the allegations in  
28

1 paragraph 21 of Fox's Complaint, if any such documents are within Fox's  
2 possession, custody, or control.

3 **REQUEST FOR PRODUCTION NO. 52:**

4 All DOCUMENTS supporting the allegations in paragraphs 22 of FOX's  
5 COMPLAINT.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 52:**

7 In addition to the foregoing General Objections, each of which is  
8 incorporated herein by reference, Fox objects to this Request because it seeks the  
9 production of documents immune from discovery under the attorney-client  
10 privilege and work product doctrine. Subject to, and without waiving, the General  
11 Objections and these specific objections, Fox will produce, based on a reasonable  
12 inquiry, responsive, non-privileged documents supporting the allegations in  
13 paragraph 22 of Fox's Complaint, if any such documents are within Fox's  
14 possession, custody, or control.

15 **REQUEST FOR PRODUCTION NO. 53:**

16 All DOCUMENTS supporting the allegations in paragraph 23 of FOX's  
17 COMPLAINT.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 53:**

19 In addition to the foregoing General Objections, each of which is  
20 incorporated herein by reference, Fox objects to this Request because it seeks the  
21 production of documents immune from discovery under the attorney-client  
22 privilege and work product doctrine. Subject to, and without waiving, the General  
23 Objections and these specific objections, Fox will produce, based on a reasonable  
24 inquiry, responsive, non-privileged documents supporting the allegations in  
25 paragraph 23 of Fox's Complaint, if any such documents are within Fox's  
26 possession, custody, or control.



**REQUEST FOR PRODUCTION NO. 54:**

All DOCUMENTS supporting the allegations in paragraph 24 of FOX's COMPLAINT.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents supporting the allegations in paragraph 24 of Fox's Complaint, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 55:**

All DOCUMENTS supporting the allegations in paragraphs 25 of FOX's COMPLAINT.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents supporting the allegations in paragraph 25 of Fox's Complaint, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 56:**

All DOCUMENTS supporting the allegations in paragraph 26 of FOX's COMPLAINT.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 56:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents supporting the allegations in paragraph 26 of Fox's Complaint, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 57:**

All DOCUMENTS supporting the allegations in paragraph 27 of FOX's COMPLAINT.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 57:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents supporting the allegations in paragraph 27 of Fox's Complaint, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 58:**

All DOCUMENTS upon which FOX's answer or affirmative defenses to the COUNTERCLAIMS are based including, but not limited to, its first affirmative defense purportedly based on the First Amendment to the United States Constitution.



**RESPONSE TO REQUEST FOR PRODUCTION NO. 58:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to this Request because it (a) seeks the production of documents immune from discovery under the attorney-client privilege and work product doctrine; and (b) seeks documents otherwise available to the public and defendant. Subject to, and without waiving, the General Objections and these specific objections, Fox will produce, based on a reasonable inquiry, responsive, non-privileged documents upon which Fox's answer or affirmative defenses to the Counterclaims are based, if any such documents are within Fox's possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 59:**

All DOCUMENTS identified or referenced in FOX's Initial Disclosures, pursuant to Fed. R. Civ. P. 26(a)(1).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 59:**

In addition to the foregoing General Objections, each of which is incorporated herein by reference, Fox objects to and is unable to respond to this Request because Fox's Initial Disclosures did not identify or reference any particular documents but rather identified categories of documents.

Dated: August 20, 2015

DANIEL M. PETROCELLI  
MOLLY M. LENS  
CAMERON H. BISCAY  
O'MELVENY & MYERS LLP

By: /s/ Molly M. Lens  
Molly M. Lens  
Attorneys for Twentieth Century Fox  
Television, a division of Twentieth  
Century Fox Film Corporation, and Fox  
Broadcasting Company

**PROOF OF SERVICE BY MAIL**

I am a citizen of the United States and employed in Los Angeles County, California, at the office of a member of the bar of this Court at whose direction this service was made. I am over the age of eighteen years and not a party to the within action. I am a resident of or employed in the county where the service described below occurred. My business address is 1999 Avenue of the Stars, Los Angeles, California 90067-6035. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence collected from me would be processed on the same day, with postage thereon fully prepaid and placed for deposit that day with the United States Postal Service. On August 20, 2015, I served following:

**FOX'S RESPONSE TO DEFENDANT'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

by putting a true and correct copy thereof in a sealed envelope, with postage fully prepaid, and placing the envelope for collection and mailing today with the United States Postal Service in accordance with the firm's ordinary business practices, addressed as follows:

Paul L. Gale  
Peter N. Villar

**TROUTMAN SANDERS LLP**  
5 Park Plaza, Suite 1400  
Irvine, CA 92614

John M. Bowler

Michael D. Hobbs, Jr.

**TROUTMAN SANDERS LLP**  
600 Peachtree St., NE Suite 5200  
Atlanta, GA 30308

I declare under penalty of perjury under the laws of the United States that the above is true and correct. Executed on August 20, 2015, at Los Angeles, California.



Tylar R. Moore



# EXHIBIT C

PETER N. VILLAR  
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949.622.2739 facsimile  
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# TROUTMAN SANDERS

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September 25, 2015

## VIA E-MAIL

Molly M. Lens, Esq.  
O'Melveny & Myers LLP  
1999 Avenue of the Stars, 7th Floor  
Los Angeles, CA 90067

**Re: Twentieth Century Fox Television, et al. v. Empire Distribution, Inc.**

Dear Ms. Lens:

On July 17, 2015, your office was served with Empire Distribution, Inc.'s ("Empire") First Request for Production of Documents to Twentieth Century Fox Television, Twentieth Century Fox Film Corporation, and Fox Broadcasting Company (collectively "Fox"). In August 2015, Empire also served Subpoenas to Produce Documents on various third parties. Your office has undertaken to respond to the First Request for Production as well as the Subpoenas to Fox Music, Inc., Daniel Strong, and Lee Daniels Entertainment.<sup>1</sup> Pursuant to L.R. 37-1, we write in an effort to resolve the following deficiencies with each of the responses to this discovery.

### **I. First Request for Production of Documents**

As a preliminary matter, Fox's refusal to produce documents outside of its self-defined relevant time period is baseless. Fox objects to requests seeking documents *prior to* the time that Fox learned of the series that became the *EMPIRE SERIES* and to requests seeking information *after* the time that Empire sent its initial objection to Fox in February 2014. *See* General Objection No. 6. Fox must produce responsive documents pertaining not only to the unnamed series that became the *EMPIRE SERIES*, but also documents referring or relating to the concepts and discrete ideas that Fox and others then developed into a unified television series. Such documents may predate the existence of the "series" itself. Fox also must produce responsive documents created after February 2014, as Empire's claim is not limited to instances of past infringement. Fox's ongoing use of Empire's mark, its ever expanding use of such mark, and intended future use of the mark are highly relevant to this case.

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<sup>1</sup> Lee Daniels Entertainment stipulated that it has "possession, custody, or control" over any and all documents that Lee Daniels may have and, therefore, the parties agreed that the subpoena directed at Lee Daniels personally did not have to be served or responded to.



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**a. REQUEST NOS. 1 & 2**

Fox improperly limits its response to “documents that reflect, refer, or relate to the use of the mark ‘Empire’” in connection with Fox’s creation and development of the *EMPIRE SERIES* from the time of conception of the series that became *Empire* through January 7, 2015. Empire’s claim and document request is not limited to Fox’s use of the mark ‘Empire,’ but also relates to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “the right of privacy of the talent” is also improper in light of the Protective Order Concerning Confidential Information issued by the Court on September 24, 2015. Fox must produce all documents relating to its creation and development of the *EMPIRE SERIES*, from the time the series was first conceived through the date of the first pilot episode on January 7, 2015, including, notes, drafts, memos, treatments, scripts, scriptments, synopsis, outlines, pitches or communications relating to the concepts, themes, plots, premises, topics and/or characters of the series, as well as communications between Fox and Lee Daniels or Danny Strong and their representatives regarding the same.

**b. REQUEST NO. 3**

Fox improperly limits its response to “documents sufficient to show any alternate names.” Empire’s claim and document request is not limited to Fox’s use of the mark ‘Empire,’ but also relates to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is misleading. Meetings or communications regarding the use of the name “Empire,” or any alternate names, for the series are highly relevant to determining what

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meaning and commercial impression Fox intended to communicate to the public through the name of the series, including the discussions and reasoning why alternate names were not used.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. All documents requested in Request No. 3 must be produced.

**c. REQUEST NO. 6**

Fox improperly limits its response to “documents submitted to the United States Patent and Trademark Office regarding Fox’s application to register ‘Empire’ as a trademark and responses received thereto.” This request seeks all documents relating to any attempts by Fox “to register the name ‘Empire’, or any other name, mark, logo or symbol relating to the *EMPIRE SERIES*, as a trademark, including any communications relating thereto. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. All documents requested in Request No. 6 must be produced, including non-privileged documents and communications other than those directly with the USPTO.

**d. REQUEST NO. 8**

Fox has improperly refused to produce documents relating to its “intellectual property rights in and to the fictional television series *Empire* and the music therefrom, including copyright and trademark rights” as alleged in paragraph 3 of the Complaint. The request is limited to documents that Fox put at issue in this case. These documents are therefore plainly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

Further, there has been no showing whatsoever by Fox that it does not have in its possession, custody, or control any responsive documents or that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “proprietary or



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confidential business information” is also improper in light of the Court’s Protective Order. All documents requested in Request No. 8 must be produced.

**e. REQUEST NOS. 11 & 12**

Fox has improperly limited its response to “exemplars” of promotions, advertisements, and marketing efforts and executed contracts. The limited production of exemplars does not fulfill Fox’s obligation to produce relevant documents. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “proprietary or confidential business information” is also improper in light of the Court’s Protective Order. All documents requested in Request Nos. 11 and 12 must be produced.

**f. REQUEST NO. 13**

Fox improperly limits its response to “executed agreements” relating to *EMPIRE SERIES MUSIC*. The unnecessarily limited production of only executed agreements does not fulfill Fox’s obligation to produce relevant documents relating to the sale, license, distribution or release of *EMPIRE SERIES MUSIC* in physical record stores, online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere else, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “proprietary or

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confidential business information” is also improper in light of the Court’s Protective Order. All documents requested in Request No. 13 must be produced.

**g. REQUEST NO. 14**

Fox’s objection based on “the right of privacy of the talent” is improper in light of the Court’s Protective Order. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. All documents requested in Request No. 14 must be produced.

**h. REQUEST NO. 15**

Fox has improperly refused to produce any documents responsive to this document request which seeks all agreements, contracts or communications between Fox and any musicians who produce, perform or compose music for the *EMPIRE SERIES*, regarding the production, promotion, advertisements, sales, license, distribution or relate of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that it does not have in its possession, custody, or control of any responsive documents or that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “the right of privacy of the talent” is also improper in light of the Court’s Protective Order. All documents requested in Request No. 15 must be produced.



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**i. REQUEST NOS. 16 & 17**

Fox improperly limits its response to documents and communications referring or relating to “use of the mark ‘Empire’” in connection with the promotion, advertisement, sale, license, distribution or release of *EMPIRE SERIES MUSIC*. Empire’s claim and document request are not limited to Fox’s use of the mark ‘Empire,’ but also relate to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “proprietary or confidential business information” is also improper in light of the Court’s Protective Order. Fox must produce documents and communications relating to the promotion, advertisement, sale, license, distribution or release of *EMPIRE SERIES MUSIC* generally, including, but not limited to, documents and communications relating to the use of the ‘Empire’ mark.

**j. REQUEST NO. 18**

Fox has improperly refused to produce any documents responsive to this document request which seeks documents reflecting, referring or relating to FOX’s online account with Mediabase. Mediabase produces song charts based on monitored airplay to provide music industry analytics. Fox or others on its behalf have provided promotional content to Mediabase, and is functioning as a record label. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that it does not have in its possession, custody, or control of any responsive documents or that there is any undue burden on Fox in producing the documents from its own files. Fox’s objection based on “proprietary or

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confidential business information” is also improper in light of the Court’s Protective Order. Fox must produce documents relating to its involvement with Mediabase and its music industry analytics.

**k. REQUEST NO. 25**

Fox improperly limits its response to “documents sufficient to show sales,” and does not address the remainder of Empire’s request, which seeks not only present but also “prospective” sales, marketing or business plans/strategies regarding products or services provided in connection with the “Empire” mark. Empire’s claim is not limited to instances of past infringement. Fox’s ongoing use of Empire’s mark and intended future use of the mark are highly relevant to this case. In addition, Empire’s claim and document request relate to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox must produce documents relating to present and prospective sales, marketing, or business plans/strategies, including, but not limited to, documents showing sales to date as requested in Request No. 25.

**l. REQUEST NO. 30**

Fox has improperly refused to produce any documents responsive to this document request which seeks documents sufficient to show each purchase of any good or service offered for sale, sold, promoted, or advertised under or in association with the “Empire” mark. Empire’s claim and document request relate to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.



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Further, there has been no showing whatsoever by Fox that it does not have in its possession, custody, or control of any responsive documents or that there is any undue burden on Fox in producing the documents from its own files. Fox's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 30 must be produced.

**m. REQUEST NO. 34**

Fox improperly limits its response to documents referring or relating to publicity or news relating to "use of the mark 'Empire.'" These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

There has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Further, Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Fox and the fact that publicly-available documents are in Fox's possession, custody, or control may be highly relevant and pursued in a deposition of Fox. Fox must produce documents relating to publicity or news relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC* generally, including, but not limited to, those relating to the use of the 'Empire' mark.

**n. REQUEST NO. 37**

Fox improperly limits its response to documents "sent to a third party regarding any objection or concern by Fox regarding that third-party's existing or intended use of the 'Empire' mark." Empire's request also seeks documents relating to any expression of concern "by any third party to FOX relating to FOX's...existing or intended use of the 'Empire' mark." There has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. All documents requested in Request No. 37 must be produced.

**o. REQUEST NO. 44**

Fox improperly limits its response to documents relating to "confusion between the 'Empire' mark and Empire Distribution." Empire's request seeks documents relating to any poll, survey, study, report, analysis or evaluation relating to the "Empire" mark, including, but not limited to, those relating to confusion. For instance, Empire is entitled to, and its request covers, any focus

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group studies or other studies testing audience impression of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox that there is any undue burden on Fox in producing the documents from its own files. Fox's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 44 must be produced.

## **II. Daniel Strong Subpoena to Produce Documents**

Mr. Strong's refusal to produce documents outside of a self-defined relevant time period is baseless. Namely, Mr. Strong objects to requests seeking documents prior to the time that he learned of the series that became the *EMPIRE SERIES* and to requests seeking information after the time that Empire sent its initial objection to Fox in February 2014. *See* General Objection No. 6. Mr. Strong must produce responsive documents pertaining not only to the unnamed series that became the *EMPIRE SERIES*, but also documents referring or relating to the concepts and discrete ideas that Fox then developed into a unified television series. Such documents may predate the existence of the "series" itself. Mr. Strong also must produce responsive documents created after February 2014, as Empire's claim is not limited to instances of past infringement. Fox's ongoing use of Empire's mark and intended future use of the mark are highly relevant to this case.

### **a. REQUEST NO. 1:**

Mr. Strong improperly limits his response to "documents that reflect, refer, or relate to the use of the mark 'Empire' in connection with Mr. Strong's creation and development of the *EMPIRE SERIES* from the time he became involved with the series that became *Empire* through January 7, 2015. Empire's claim and subpoena request is not limited to Mr. Strong's use of the mark 'Empire,' but also relates to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a



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likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

There has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong must produce all documents relating to its creation and development of the *EMPIRE SERIES*, from the time the series was first conceived through the date of the first pilot episode on January 7, 2015, including, notes, drafts, memos, treatments, scripts, scriptments, synopsis, outlines, pitches or communications relating to the concepts, themes, plots, premises, topics and/or characters of the series.

**b. REQUEST NO. 3:**

With respect to alternate names for the series that were considered, proposed, or discussed, Mr. Strong improperly limits his response to “documents sufficient to show any alternate names.” Empire’s claim and subpoena request is not limited to Mr. Strong’s use of the name “Empire,” but also relates to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

There has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong must produce all documents regarding all meetings or communications regarding the use of the name “Empire,” or any alternate names, for the series are highly relevant to determining what meaning and commercial impression Mr. Strong intended to communicate to the public through the name of the series and the discussions and reasoning why alternate names were not used.

**c. REQUEST NO. 6**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to any attempts by Mr. Strong or Fox “to register the name ‘Empire’, or any other name, mark, logo or symbol relating to the *EMPIRE SERIES*, as a trademark, including any communications relating thereto. These documents are highly relevant

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to the issues in this case, and there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 6 must be produced.

**d. REQUEST NO. 9**

Mr. Strong has improperly limited his response to “documents sufficient to reflect the use of a city skyline graphic in conjunction with the ‘Empire’ mark/logo.” Empire’s claim is not limited to Fox or Mr. Strong’s use of the name “Empire” or the city skyline graphic in conjunction with the “Empire” mark/logo, but also relates to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

Empire’s subpoena request therefore seeks all documents reflecting, referring or relating to use of such city skyline graphic, including, without limitation, all communications regarding such use of the city skyline graphic which are highly relevant to determining why the city skyline graphic was chosen, what meaning and commercial impression was intended to be conveyed to the public by use of the city skyline in conjunction with the “Empire” mark/logo, and the discussions and communications regarding such use.

**e. REQUEST NO. 10.**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to any advertisements, promotions or marketing efforts by Mr. Strong or Fox using the “Empire” mark/logo. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.



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Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 10 must be produced.

**f. REQUEST NO. 11.**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to the promotion, advertisement, or marketing of the *EMPIRE SERIES MUSIC*, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 11 must be produced.

**g. REQUEST NO. 12.**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to sale, license, distribution or release of the *EMPIRE SERIES MUSIC* in physical record stores, online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere else, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In

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addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents from his own files. All documents requested in Request No. 12 must be produced.

#### **h. REQUEST NO. 14.**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all agreements, contracts or communications between him or Fox and any musicians who produce, perform or compose music for the *EMPIRE SERIES*, regarding the production, promotion, advertisements, sales, license, distribution or relate of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong’s objection based on “the right of privacy of the talent” is also improper in light of the Court’s Protective Order. All documents requested in Request No. 14 must be produced.

#### **i. REQUEST NO. 15.**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all communications between him and FOX, or any other person or entity, regarding the production, sale, license, promotion, advertisement, marketing, distribution or release of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between



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the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong's objection based on "the right of privacy of the talent" is also improper in light of the Court's Protective Order. All documents requested in Request No. 15 must be produced.

**j. REQUEST NO. 16.**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to the performance, presentation or promotion of the *EMPIRE SERIES MUSIC* at radio stations, concerts, live performances, events, physical record stores and other venues. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including but not limited to whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, control, or control. All documents requested in Request No. 16 must be produced.

**k. REQUEST NO. 18.**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to any publicity or news relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand

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and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Mr. Strong and the fact that publicly-available documents are in Mr. Strong's possession, custody, or control may be highly relevant and pursued in a deposition of Fox.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 18 must be produced.

#### **I. REQUEST NO. 22.**

Mr. Strong has improperly limited his response to documents relating to "confusion between the 'Empire' mark and Empire Distribution." Empire's subpoena request seeks documents relating to any poll, survey, study, report, analysis or evaluation relating to the "Empire" mark, including but not limited to those relating to confusion. For instance, Empire is entitled to, and its request covers, any focus group studies or other studies testing audience impression of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Mr. Strong's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 22 must be produced.



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**m. REQUEST NO. 23.**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to the complaint of Fox or counterclaims of Empire. These documents are highly relevant to the issues in this case. Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents from its own files. Mr. Strong's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 23 must be produced.

**n. REQUEST NO. 24.**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to Empire. These documents are highly relevant to the issues in this case. Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. Further, Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Mr. Strong and the fact that publicly-available documents are in Mr. Strong's possession, custody, or control may be highly relevant and pursued in a deposition of Mr. Strong. All documents requested in Request No. 24 must be produced.

**o. REQUEST NO. 26.**

Mr. Strong has improperly refused to produce any documents responsive to this subpoena request which seeks any research, including, but not limited to, marketing research such as surveys and focus groups, research on social media or on search engines conducted by Lee Daniels Entertainment, or acquired from third parties (e.g., Nielsen), regarding the demographics of the consumers of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

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Further, there has been no showing whatsoever by Mr. Strong that he does not have in his possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Mr. Strong in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 26 must be produced.

### **III. Fox Music, Inc. Subpoena to Produce Documents**

Fox Music's refusal to produce documents outside of its self-defined relevant time period is baseless. Namely, Fox Music objects to requests seeking documents prior to the time that Fox Music learned of the series that became the *EMPIRE SERIES* and to requests seeking information after the time that Empire sent its initial objection to Fox in February 2014. *See* General Objection No. 6. Fox Music must produce responsive documents pertaining not only to the unnamed series that became the *EMPIRE SERIES*, but also documents referring or relating to the concepts and discrete ideas that Fox then developed into a unified television series. Such documents may predate the existence of the "series" itself. Fox Music also must produce responsive documents created after February 2014, as Empire's claim is not limited to instances of past infringement. Fox's ongoing use of Empire's mark and intended future use of the mark are highly relevant to this case.

#### **a. REQUEST NOS. 1 & 2**

Fox Music improperly limits its response to documents referring or relating to Empire Distribution, the *EMPIRE SERIES*, and *EMPIRE SERIES MUSIC* and their "use of the 'Empire' name." These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Fox Music and the fact that publicly-available documents are in Fox Music's possession, custody, or control may be highly relevant and pursued in a deposition of Fox Music. In addition, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, custody, or control. Fox Music must produce documents relating to relating to the



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Empire Distribution and the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC* generally, including, but not limited to, those relating to the use of the ‘Empire’ name.

**b. REQUEST NO. 5**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to any attempts by Fox Music to register ‘Empire’ or any other name, mark, logo or symbol relating to *EMPIRE SERIES MUSIC*. Fox Music’s decision to pursue trademark protection for names and symbols used in conjunction with its music goods and services, which overlap with Empire’s goods and services, and the circumstances surrounding that decision are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, custody, or control. All documents requested in Request No. 5 must be produced.

**c. REQUEST NO. 7**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to the promotion, advertisement, or marketing of the *EMPIRE SERIES MUSIC*, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue

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burden on Fox Music in producing the documents that are in its possession, custody, or control. Fox Music's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 7 must be produced.

**d. REQUEST NO. 8**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to sale, license, distribution or release of the *EMPIRE SERIES MUSIC* in physical record stores, online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere else, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents from its own files. Fox Music's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 8 must be produced.

**e. REQUEST NO. 9**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all agreements, contracts or communications between it or Fox and any musicians who produce, perform or compose music for the *EMPIRE SERIES*, regarding the production, promotion, advertisements, sales, license, distribution or relate of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant

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to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, custody, or control. Fox Music's objection based on "the right of privacy of the talent" is also improper in light of the Court's Protective Order. All documents requested in Request No. 9 must be produced.

**f. REQUEST NOS. 10 & 11**

Fox improperly refuses to produce documents referring or relating to the promotion, advertisement, sale, license, distribution or release of *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, custody, or control. Fox Music's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request Nos. 10 and 11 must be produced.

**g. REQUEST NO. 12**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to the performance, presentation or promotion of the *EMPIRE SERIES MUSIC* at radio stations, concerts, live performances, events, physical record stores and other venues. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters,



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business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, control, or control. All documents requested in Request No. 12 must be produced.

#### **h. REQUEST NO. 13**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to any present or prospective sales, marketing or business plans/strategies regarding the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, control, or control. Fox Music’s objection based on “proprietary or confidential business information” is also improper in light of the Court’s Protective Order. All documents requested in Request No. 13 must be produced.

#### **i. REQUEST NO. 14**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to any revenues, expenses, and profits relating to all goods and services sold, or offered for sale, in association with the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the

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parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, control, or control. Fox Music's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 14 must be produced.

**j. REQUEST NO. 15**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to relating to the total volume of sales for all goods and services sold in association with the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, control, or control. All documents requested in Request No. 15 must be produced.

**k. REQUEST NO. 16**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to the amounts spent to advertise, market and promote goods or services in association with the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at

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issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in its possession, control, or control. Fox Music's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 16 must be produced.

#### **I. REQUEST NO. 17**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to any publicity or news relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*. These publicity documents are highly relevant to the issues in this case. Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Fox Music and the fact that publicly-available documents are in Fox Music's possession, custody, or control may be highly relevant and pursued in a deposition of Fox Music.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 17 must be produced.

#### **m. REQUEST NO. 18**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to anyone other than FOX that has used or is using the designation or word "Empire" in the music industry. These documents are highly relevant to the issues in this case. Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Fox Music and the fact that publicly-available documents are in Fox Music's possession, custody, or control may be highly relevant and pursued in a deposition of Fox Music.



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Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Fox Music in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 18 must be produced.

**n. REQUEST NO. 21**

Fox Music improperly limits its response to documents relating to “confusion between the ‘Empire’ mark and Empire Distribution.” Empire’s subpoena request seeks documents relating to any poll, survey, study, report, analysis or evaluation relating to the “Empire” mark, including, but not limited to, those relating to confusion. For instance, Empire is entitled to, and its request covers, any focus group studies or other studies testing audience impression of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading. All documents requested in Request No. 21 must be produced.

**o. REQUEST NO. 23**

Fox Music has improperly refused to produce any documents responsive to this subpoena request which seeks any research, including, but not limited to, marketing research such as surveys and focus groups, research on social media or on search engines conducted by Fox Music, or acquired from third parties (e.g., Nielsen), regarding the demographics of the consumers of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Fox Music that it does not have in its possession, custody, or control any responsive documents or that there is any undue burden on

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Fox Music in producing the documents from its own files. All documents requested in Request No. 23 must be produced.

#### **IV. Lee Daniels Entertainment Subpoena to Produce Documents**

Lee Daniels Entertainment's refusal to produce documents outside of its self-defined relevant time period is baseless. Namely, Lee Daniels Entertainment objects to requests seeking documents prior to the time that it learned of the series that became the *EMPIRE SERIES* and to requests seeking information after the time that Empire sent its initial objection to Fox in February 2014. *See* General Objection No. 6. Lee Daniels Entertainment must produce responsive documents pertaining not only to the unnamed series that became the *EMPIRE SERIES*, but also documents referring or relating to the concepts and discrete ideas that Fox then developed into a unified television series. Such documents may predate the existence of the "series" itself. Lee Daniels Entertainment also must produce responsive documents created after February 2014, as Empire's claim is not limited to instances of past infringement. Fox's ongoing use of Empire's mark and intended future use of the mark are highly relevant to this case.

##### **a. REQUEST NO. 1:**

Lee Daniels Entertainment improperly limits its response to "documents that reflect, refer, or relate to the use of the mark 'Empire'" in connection with Lee Daniels Entertainment's creation and development of the *EMPIRE SERIES* from the time Lee Daniels Entertainment became involved with the series that became *Empire* through January 7, 2015. Empire's claim and subpoena request is not limited to Fox or Lee Daniels Entertainment's use of the mark 'Empire,' but also relates to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

There has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents that are in his possession, custody, or control. Lee Daniels Entertainment must produce all documents relating to its creation and development of the *EMPIRE SERIES*, from the time the series was first conceived through the date of the first pilot episode on January 7, 2015, including, notes, drafts, memos, treatments, scripts, scriptments, synopsis, outlines, pitches or communications relating to the concepts, themes, plots, premises, topics and/or characters of the series.

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**b. REQUEST NO. 3:**

With respect to alternate names for the series that were considered, proposed, or discussed, Lee Daniels Entertainment improperly limits its response to “documents sufficient to show any alternate names.” Empire’s claim and subpoena request is not limited to Fox or Lee Daniels Entertainment’s use of the name “empire,” but also relates to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion.

There has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents that are in his possession, custody, or control. Lee Daniels Entertainment must produce all documents regarding all meetings or communications regarding the use of the name “Empire,” or any alternate names, for the series are highly relevant to determining what meaning and commercial impression Lee Daniels Entertainment intended to communicate to the public through the name of the series and the discussions and reasoning why alternate names were not used.

**c. REQUEST NO. 6**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to any attempts by Lee Daniels Entertainment or Fox “to register the name ‘Empire’, or any other name, mark, logo or symbol relating to the *EMPIRE SERIES*, as a trademark, including any communications relating thereto. These documents are highly relevant to the issues in this case, and there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. All documents requested in Request No. 6 must be produced.

**d. REQUEST NO. 9**

Lee Daniels Entertainment has improperly limited its response to “documents sufficient to reflect the use of a city skyline graphic in conjunction with the “Empire’ mark/logo.” Empire’s claim is not limited to Fox or Lee Daniels Entertainment’s use of the name “Empire” or the city skyline graphic in conjunction with the “Empire” mark/logo, but also relates to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between



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the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. Empire's subpoena request therefore seeks all documents reflecting, referring or relating to use of such city skyline graphic, including, without limitation, all communications regarding such use of the city skyline graphic which are highly relevant to determining why the city skyline graphic was chosen, what meaning and commercial impression was intended to be conveyed to the public by use of the city skyline in conjunction with the "Empire" mark/logo, and the discussions and communications regarding such use.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents that are in his possession, custody, or control. All documents requested in Request No. 9 must be produced.

**e. REQUEST NO. 10.**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to any advertisements, promotions or marketing efforts by Lee Daniels Entertainment or Fox using the "Empire" mark/logo. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. All documents requested in Request No. 10 must be produced.

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**f. REQUEST NO. 11.**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to the promotion, advertisement, or marketing of the *EMPIRE SERIES MUSIC*, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Lee Daniels Entertainment's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 11 must be produced.

**g. REQUEST NO. 12.**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring, or relating to sale, license, distribution or release of the *EMPIRE SERIES MUSIC* in physical record stores, online stores such as iTunes, Google Play, Amazon.com, and Spotify, or anywhere else, including, but not limited to, all contracts, agreements, or communications relating thereto. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative,

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non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Lee Daniels Entertainment's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 12 must be produced.

**h. REQUEST NO. 14.**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all agreements, contracts or communications between Lee Daniels Entertainment or Fox and any musicians who produce, perform or compose music for the *EMPIRE SERIES*, regarding the production, promotion, advertisements, sales, license, distribution or relate of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Lee Daniels Entertainment's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 14 must be produced.

**i. REQUEST NO. 15.**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all communications between Lee Daniels Entertainment and FOX, or any other person or entity, regarding the production, sale, license, promotion, advertisement, marketing, distribution or release of the *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims (including damages) and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to



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determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Lee Daniels Entertainment’s objection based on “the right of privacy of the talent” is also improper in light of the Court’s Protective Order. All documents requested in Request No. 15 must be produced.

**j. REQUEST NO. 16.**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to the performance, presentation or promotion of the *EMPIRE SERIES MUSIC* at radio stations, concerts, live performances, events, physical record stores and other venues. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap between the parties’ target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a “First Amendment” defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox’s use of the ‘Empire’ mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. All documents requested in Request No. 16 must be produced.

**k. REQUEST NO. 18.**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents reflecting, referring or relating to any publicity or news relating to the *EMPIRE SERIES* and *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties’ claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties’ respective businesses, overlap

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between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Empire is not required to guess what documents that are "available to the public" may be in the possession, custody, or control of Lee Daniels Entertainment and the fact that publicly-available documents are in Lee Daniels Entertainment's possession, custody, or control may be highly relevant and pursued in a deposition of Lee Daniels Entertainment. All documents requested in Request No. 18 must be produced.

#### **I. REQUEST NO. 22.**

Lee Daniels Entertainment has improperly limited its response to documents relating to "confusion between the 'Empire' mark and Empire Distribution." Empire's subpoena request seeks documents relating to any poll, survey, study, report, analysis or evaluation relating to the "Empire" mark, including, but not limited to, those relating to confusion. For instance, Empire is entitled to, and its request covers, any focus group studies or other studies testing audience impression of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Lee Daniels Entertainment's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order.

#### **m. REQUEST NO. 23.**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to the complaint of Fox or counterclaims of Empire. These documents are highly relevant to the issues in this case.

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Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. Lee Daniels Entertainment's objection based on "proprietary or confidential business information" is also improper in light of the Court's Protective Order. All documents requested in Request No. 23 must be produced.

**n. REQUEST NO. 24.**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks all documents relating to Empire. These documents are highly relevant to the issues in this case. There has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative, non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files.

Further, Empire is not required to guess what documents that are "available to the public" Lee Daniels Entertainment may have in its possession, custody, or control and the fact that they are in Lee Daniels' possession, custody, or control may be highly relevant and pursued in a deposition of Lee Daniels Entertainment. All documents requested in Request No. 24 must be produced.

**o. REQUEST NO. 26.**

Lee Daniels Entertainment has improperly refused to produce any documents responsive to this subpoena request which seeks any research, including, but not limited to, marketing research such as surveys and focus groups, research on social media or on search engines conducted by Lee Daniels Entertainment, or acquired from third parties (e.g., Nielsen), regarding the demographics of the consumers of the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC*. These documents are highly relevant to the parties' claims and defenses in this trademark case, which have put at issue thematic similarities between the *EMPIRE SERIES* or *EMPIRE SERIES MUSIC* on the one hand and Empire on the other hand, overlap between the parties' respective businesses, overlap between the parties' target markets, and overlap between the *EMPIRE SERIES* characters, business themes, music, musical artists, marketing/advertising channels, product line expansion, and distribution channels, all of which are relevant to determining a likelihood of confusion. In addition, Fox has injected the issue of a "First Amendment" defense to trademark infringement and this request seeks documents relevant to issues including, but not limited to, whether Fox's use of the 'Empire' mark is commercial and/or misleading.

Further, there has been no showing whatsoever by Lee Daniels Entertainment that it does not have in its possession, custody, or control any responsive documents that are non-cumulative,



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non-duplicative, or non-identical to the discovery available from Fox or that there is any undue burden on Lee Daniels Entertainment in producing the documents from its own files. All documents requested in Request No. 26 must be produced.

We reserve the right to raise additional issues including, but not limited to, any issues raised by Fox with regard to Empire's responses to requests for production of documents. Pursuant to Local Rule 37-1, please provide your availability for a telephone conference within the next ten days, to discuss these issues.

Sincerely,



Peter N. Villar

**EXHIBIT D**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TWENTIETH CENTURY FOX  
TELEVISION, et al.

Plaintiff,

v.

EMPIRE DISTRIBUTION, INC.,

Defendants.

No. CV 15-2158 PA (FFMx)

PROTECTIVE ORDER CONCERNING  
CONFIDENTIAL INFORMATION

The Court enters the following protective order:

1. In connection with discovery proceedings in this action, the parties may designate any document, thing, material, testimony or other information derived therefrom, as “Confidential” under the terms of this Protective Order (hereinafter “Order”). Confidential information is trade secrets, proprietary information, and other highly confidential commercial information, or material required to be kept confidential by state or federal law.
2. By designating a document, thing, material, testimony or other information derived therefrom as “Confidential” under the terms of this Order, the party making the designation is certifying to the Court that there is a good faith basis in law and in fact for the designation within the meaning of Federal Rule of Civil Procedure 26(g).



1           3.       Confidential documents shall be so designated by stamping copies of the  
2 document produced to a party with the legend “CONFIDENTIAL.” Stamping the legend  
3 “CONFIDENTIAL” on the cover of any multi-page documents shall designate all pages of  
4 the document as confidential, unless otherwise indicated by the producing party.

5           4.       Testimony taken at a deposition may be designated as confidential by making  
6 a statement to that effect on the record at the deposition. Arrangements shall be made with  
7 the court reporter taking and transcribing such deposition to separately bind such portions of  
8 the transcript containing information designated as confidential, and to label such portions  
9 appropriately.

10          5.       Material designated as confidential under this Order, the information  
11 contained therein, and any summaries, copies, abstracts, or other documents derived in  
12 whole or in part from material designated as confidential (hereinafter “Confidential  
13 Material”) shall be used only for the purpose of the prosecution, defense, or settlement of  
14 this action, and for no other purpose.

15          6.       Confidential Material produced pursuant to this Order may be disclosed or  
16 made available only to the Court, to counsel for a party (including the paralegal, clerical, and  
17 secretarial staff employed by such counsel), and to the “qualified persons” designated below:

- 18               (a)     a party, or an officer, director, or employee of a party deemed necessary  
19                       by counsel to aid in the prosecution, defense, or settlement of this  
20                       action;  
21               (b)     experts or consultants (together with their clerical staff) retained by  
22                       such counsel to assist in the prosecution, defense, or settlement of this  
23                       action;  
24               (c)     court reporter(s) employed in this action;  
25               (d)     a witness at any deposition or other proceeding in this action; and  
26               (e)     any other person as to whom the parties in writing agree.

27 Prior to receiving any Confidential Material, each “qualified person” shall be provided with  
28 a copy of this Order and shall execute a nondisclosure agreement in the form of Attachment

1 A, a copy of which shall be provided forthwith to counsel for each other party and for the  
2 parties.

3 7. Only qualified persons may attend depositions at which Confidential Material  
4 is used or discussed.

5 8. The parties may further designate certain discovery material or testimony of a  
6 highly confidential and/or proprietary nature as “CONFIDENTIAL - ATTORNEY’S EYES  
7 ONLY” (hereinafter “Attorney’s Eyes Only Material”), in the manner described in  
8 paragraphs 2 and 3 above. Attorney’s Eyes Only Material, and the information contained  
9 therein, shall be disclosed only to the Court, to counsel for the parties (including the  
10 paralegal, clerical and secretarial staff employed by such counsel), and to the “qualified  
11 persons” listed in subparagraphs 6(b) through (e) above, but shall not be disclosed to a party,  
12 or to an officer, director or employee of a party, unless otherwise agreed or ordered. If  
13 disclosure of Attorney’s Eyes Only Material is made pursuant to this paragraph, all other  
14 provisions in this order with respect to confidentiality shall also apply.

15 9. Nothing herein shall impose any restrictions on the use or disclosure by a party  
16 of material obtained by such party independent of discovery in this action, whether or not  
17 such material is also obtained through discovery in this action, or from disclosing its own  
18 Confidential Material as it deems appropriate.

19 10. If Confidential Material, including any portion of a deposition transcript  
20 designated as Confidential or Attorney's Eyes Only, is included in any papers to be filed with  
21 the Court, such papers shall be accompanied by an application to (a) file the confidential  
22 portions thereof under seal (if such portions are segregable), or (b) file the papers in their  
23 entirety under seal (if the confidential portions are not segregable). The application shall be  
24 directed to the judge to whom the papers are directed. Pending the ruling on the application,  
25 the papers or portions thereof subject to the sealing application shall be lodged under seal.

26 11. This Order shall be without prejudice to the right of the parties (i) to bring  
27 before the Court at any time the question of whether any particular document or information  
28 is confidential or whether its use should be restricted or (ii) to present a motion to the Court

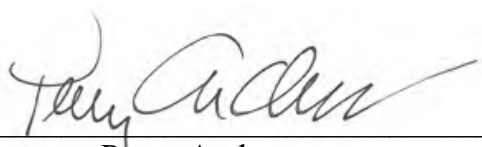
1 under Fed. R. Civ. P. 26(c) for a separate protective order as to any particular document or  
2 information, including restrictions differing from those as specified herein. This Order shall  
3 not be deemed to prejudice the parties in any way in any future application for modification  
4 of this Order.

5 12. This Order is entered solely for the purpose of facilitating the exchange of  
6 documents and information between the parties to this action without involving the Court  
7 unnecessarily in the process. Nothing in this Order nor the production of any information or  
8 document under the terms of this Order nor any proceedings pursuant to this Order shall be  
9 deemed to have the effect of an admission or waiver by either party or of altering the  
10 confidentiality or nonconfidentiality of any such document or information or altering any  
11 existing obligation of any party or the absence thereof.

12 13. This Order shall survive the final termination of this action, to the extent that  
13 the information contained in Confidential Material is not or does not become known to the  
14 public, and the Court shall retain jurisdiction to resolve any dispute concerning the use of  
15 information disclosed hereunder. Upon termination of this case, counsel for the parties shall  
16 assemble and return to each other all documents, material and deposition transcripts  
17 designated as confidential and all copies of same, or shall certify the destruction thereof.

18 IT IS SO ORDERED.

19  
20 DATED: September 24, 2015

21  
22   
23 \_\_\_\_\_  
24 Percy Anderson  
25 UNITED STATES DISTRICT JUDGE  
26  
27  
28



Attachment A

**Nondisclosure Agreement**

I, \_\_\_\_\_, do solemnly swear that I am fully familiar with the terms of the Protective Order Concerning Confidential Information entered in Twentieth Century Fox Television, et al. v. Empire Distribution, Inc., United States District Court for the Central District of California, Civil Action No. CV 15-2158 PA (FFMx), and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of the Court. I hereby consent to the jurisdiction of the Court for purposes of enforcing this nondisclosure agreement.

DATED:

\_\_\_\_\_  
[Name of Signator Typed]

# EXHIBIT E

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TWENTIETH CENTURY FOX  
TELEVISION, et al.,

Plaintiff,

v.

EMPIRE DISTRIBUTION, INC.,

Defendant.

Case No. CV15-2158 PA (FFMx)

SCHEDULING ORDER [FED. R. CIV. P.  
16(b)]

1. Establishing a Discovery Cut-off  
Date of 1/25/2016
2. Setting Motion Cut-off date of  
2/1/2016
3. Setting Final Pretrial Conference for  
3/4/2016, at 1:30 p.m.
4. Setting Jury Trial Date of 4/5/2016,  
at 9:00 a.m.

1. Discovery Cut-Off. This is the last date to complete discovery, including expert discovery, and the resolution of any discovery motions before the magistrate judge. If expert witnesses are to be called at trial, the parties shall designate experts to be called at trial and provide reports required by Fed. R. Civ. P. 26(a)(2)(B), not later than eight weeks prior to the discovery cutoff date. Rebuttal expert witnesses shall be designated and reports provided as required by Fed. R. Civ. P. 26(a)(2)(B), not later than five weeks prior to the discovery cutoff date. Failure to timely comply with this deadline may result in the expert being excluded at trial as a witness. The Court requires compliance with Local Rule 37-1



1 and 37-2 in the preparation and filing of discovery motions. Discovery motions may not be  
2 heard on an ex parte basis.

3 2. Joinder of Parties and Amendment of Pleadings. The deadline for joining parties  
4 and amending pleadings is listed in the "Schedule of Trial and Pretrial Dates" issued by the  
5 Court. Any motions to join other parties or for leave to amend the pleadings shall be filed  
6 and served at least twenty-eight (28) days prior to the hearing deadline as required by Local  
7 Rule 6-1 so that they can be heard and decided prior to the deadline. This deadline does not  
8 apply if the deadline for joining parties or amending pleadings has already been calendared  
9 or occurred by virtue of an order issued by this Court or another court.

10 In addition to the requirements of Local Rule 15-1, all motions to amend the  
11 pleadings shall (1) state the effect of the amendment; (2) be serially numbered to  
12 differentiate the amendment from previous amendments and (3) state the page, line  
13 number(s), and wording of any proposed change or addition of material.

14 For the Court's ease of reference, the moving party shall submit to chambers a  
15 redlined version of the amended pleading.

16 3. Motion Filing Cut-Off. The Court hears motions on Mondays at 1:30 p.m. The  
17 motion filing cut-off date is the last day motions may be heard (not filed). The Court will  
18 not decide late motions. Issues left undetermined by the passage of the motion cut-off date  
19 should be listed as issues for trial in the Final Pretrial Conference Order. As an exception to  
20 the above, motions in limine dealing with evidentiary matters may be heard at or before trial;  
21 however, summary judgment motions disguised as motions in limine will not be heard.  
22 Parties need not wait until the discovery cut-off to bring motions for summary judgment or  
23 partial summary judgment. However, in the usual case, the Court expects that more than the  
24 minimum notice will be provided to counsel opposing motions for summary judgment. In  
25 the usual case, the parties should confer and agree on the date for setting such motions.

26 Ex parte applications are entertained solely for extraordinary relief. See Mission  
27 Power Eng. Co. v. Continental Casualty Co., 883 F.Supp. 488 (C.D. Cal. 1995). Strict  
28

1 adherence to proper ex parte procedures is required for any ex parte application filed with  
2 the Court.

3 4. Stipulations to Extend Time. Stipulations to extend the time to file any required  
4 document or to continue any pretrial or trial date must set forth:

- 5 (a) the existing due date or hearing date;
- 6 (b) the current pretrial conference date and trial date;
- 7 (c) the specific reasons supporting good cause for granting the extension or  
8 continuance. For example, a statement that a continuance “will promote settlement” or that  
9 the parties decided to suspend discovery while engaging in settlement discussions is  
10 insufficient.
- 11 (d) whether there have been any prior requests for extensions or continuances, and  
12 whether these were granted or denied by the Court.

13 5. Summary Judgment Motions. The Separate Statement of Undisputed Facts is to be  
14 prepared in a two column format. The left hand column should set forth the allegedly  
15 undisputed fact. The right hand column should set forth the evidence that supports the  
16 factual statement. The fact statements should be set forth in sequentially numbered  
17 paragraphs. Each paragraph should contain a narrowly focused statement of fact. Each  
18 numbered paragraph should address a single subject in as concise a manner as possible.

19 The opposing party’s statement of genuine issues must be in two columns and  
20 track the movant’s separate statement exactly as prepared. The document must be in two  
21 columns; the left hand column must restate the allegedly undisputed fact, and the right hand  
22 column must indicate either undisputed, or disputed. The opposing party may dispute all or  
23 only a portion of the statement, but if disputing only a portion, must clearly indicate what  
24 part is being disputed. Where the opposing party is disputing the fact in whole or part, the  
25 opposing party must, in the right hand column, label and restate the moving party’s evidence  
26 in support of the fact, followed by the opposing party’s evidence controverting the fact.  
27 Where the opposing party is disputing the fact on the basis of an evidentiary objection, the  
28

1 party must cite to the evidence alleged to be objectionable and state the ground of the  
2 objection and nothing more. **No argument should be set forth in this document.**

3 The opposing party may submit additional material facts that bear on or relate to  
4 the issues raised by the movant, which shall follow the format described above for the  
5 moving party's separate statement. These additional facts shall follow the movant's facts,  
6 shall continue in sequentially numbered paragraphs (i.e., if movant's last statement of fact  
7 was set forth in paragraph 30, then the first new fact will be set forth in paragraph 31), and  
8 shall set forth in the right hand column the evidence that supports that statement.

9 The moving party, in its reply, shall respond to the additional facts in the same  
10 manner and format that the opposition party is required to adhere to in responding to the  
11 statement of undisputed facts, as described above.

12 (a) Supporting Evidence. No party should submit any evidence other than the  
13 specific items of evidence or testimony necessary to support or controvert a proposed  
14 statement of undisputed fact. Thus, for example, the entire transcript of a deposition, entire  
15 sets of interrogatory responses, and documents that do not specifically support or controvert  
16 material in the separate statements, should not be submitted in support or opposition to a  
17 motion for summary judgment. Any such material will not be considered.

18 Evidence submitted in support or opposition to a motion should be submitted  
19 either by way of stipulation or as exhibits to declarations sufficient to authenticate the  
20 proffered evidence, and should not be attached to the Memorandum of Points and  
21 Authorities. The Court will accept counsel's authentication of deposition transcript, of  
22 written discovery responses, and of the receipt of documents in discovery if the fact that  
23 the document was in the opponent's possession is of independent significance.

24 Documentary evidence as to which there is no stipulation regarding foundation must be  
25 accompanied by the testimony, either by declaration or properly authenticated deposition  
26 transcript, of a witness who can establish its authenticity.

27 If evidence in support of or in opposition to a motion exceeds twenty pages, the  
28 evidence must be in a separate bound volume and include a Table of Contents.



(b) Objections to Evidence. If a party disputes a fact based in whole or in part on an evidentiary objection, the ground of the objection, as indicated above, should be stated in the separate statement but not argued in that document. Evidentiary objections are to be addressed in a separate memorandum to be filed with the opposition or reply brief of the party. This memorandum should be organized **to track the paragraph numbers of the separate statement in sequence**. It should identify the specific item of evidence to which objection is made, the ground of the objection, and a very brief argument with citation to authority as to why the objection is well taken. The following is an example of the format contemplated by the Court:

Separate Statement Paragraph 1: Objection to the supporting deposition transcript of Jane Smith at 60:1-10 on the grounds that the statement constitutes inadmissible hearsay and no exception is applicable. To the extent it is offered to prove her state of mind, it is irrelevant since her state of mind is not in issue.

Fed. R. Evid. 801, 802.

Do not submit blanket or boilerplate objections to the opponent's statements of undisputed fact: these will be disregarded and overruled.

(c) The Memorandum of Points and Authorities. The movant's memorandum of points and authorities should be in the usual form required under Local Rule 7 and should contain a narrative statement of facts as to those aspects of the case that are before the Court. All facts should be supported with citations to the paragraph number in the Separate Statement that supports the factual assertion and not to the underlying evidence.

Unless the case involves some unusual twist on Rule 56, the motion need only contain a brief statement of the Rule 56 standard; the Court is familiar with the Rule and with its interpretation under Celotex and its progeny. If at all possible, the argument should be organized to focus on the pertinent elements of the cause(s) of action or defense(s) in

1 issue, with the purpose of showing the existence or non-existence of a genuine issue of  
2 material fact for trial on that element of the claim or defense.

3 Likewise, the opposition memorandum of points and authorities should be in the  
4 usual form required by Local Rule 7, and where the opposition memorandum sets forth  
5 facts, the memorandum should cite to paragraphs in the separate statement if they are not in  
6 dispute, to the evidence that contravenes the fact where the fact is in dispute, or, if the fact is  
7 contravened by an additional fact in the statement of genuine issues, the citation should be to  
8 such fact by paragraph number.

9 (d) Timing. In virtually every case, the Court expects that the moving party will  
10 provide more than the minimum twenty-eight (28) day notice for such motions. The moving  
11 party shall submit a copy of the Statement of Uncontroverted Facts and Conclusions of Law  
12 to the Court's ECF e-mail address, in WordPerfect format (X6 or earlier versions) or  
13 Microsoft Word (Word 2010 or earlier versions).

14 6. Motions in Limine. Before filing any motion in limine, counsel for the parties  
15 shall confer pursuant to Local Rule 7-3 in a good faith effort to eliminate the necessity for  
16 hearing the motion in limine or to eliminate as many of the disputes as possible. It shall be  
17 the responsibility of counsel for the moving party to arrange for this conference. The  
18 conference shall take place in person within seven days of service upon opposing counsel of  
19 a letter requesting such conference. Unless counsel agree otherwise, the conference shall  
20 take place at the office of the moving party. If both counsel are not located in the same  
21 county in the Central District, the conference may take place by telephone. The moving  
22 party's letter shall identify the testimony, exhibits, or other specific matters alleged to be  
23 inadmissible and/or prejudicial, shall state briefly with respect to each such matter the  
24 moving party's position (and provide any legal authority which the moving party believes is  
25 dispositive), and specify the terms of the order to be sought.

26 (a) If counsel are unable to resolve their differences, they shall prepare a Joint  
27 Motion in Limine. The Joint Motion in Limine shall consist of one document signed by all  
28 counsel. The Joint Motion in Limine shall contain a clear identification of the testimony,

1 exhibits, or other specific matters alleged to be inadmissible and/or prejudicial and a  
2 statement of the specific prejudice that will be suffered by the moving party if the motion is  
3 not granted. The identification of the matters in dispute shall be followed by each party's  
4 contentions and each party's memorandum of points and authorities. The title page of the  
5 Joint Motion in Limine must state the hearing date for the motions in limine and the trial  
6 date.

7 (b) Unless otherwise ordered by the Court, motions in limine will be heard on the  
8 date indicated in the Schedule of Trial and Pretrial Dates issued by the Court. Unless the  
9 Court in its discretion otherwise allows, no motions in limine shall be filed or heard on an ex  
10 parte basis absent a showing of irreparable injury or prejudice not attributable to the lack of  
11 diligence of the moving party. The moving party shall serve its portion of the Joint Motion  
12 in Limine on the responding party fourteen (14) days prior to the date for filing of motions  
13 in limine indicated in the Schedule of Trial and Pretrial Dates. The responding party shall  
14 then serve the opposition portion of the Joint Motion in Limine on the moving party both on  
15 paper and in an electronic format seven (7) days prior to the date for the filing of motions in  
16 limine. The moving party shall incorporate the responding party's portion into the Joint  
17 Motion in Limine, add its arguments in reply, and file and serve the Joint Motion in Limine.  
18 Neither party's portions of a Joint Motion in Limine shall exceed eight (8) pages.

19 (c) Joint Motions in Limine made for the purpose of precluding the mention or  
20 display of inadmissible and/or prejudicial matter in the presence of the jury shall be  
21 accompanied by a declaration from the moving party that includes the following: (1) a clear  
22 identification of the specific matter alleged to be inadmissible and/or prejudicial; (2) a  
23 representation to the Court that the subject of the motion in limine has been discussed with  
24 opposing counsel, and that opposing counsel has either indicated that such matter will be  
25 mentioned or displayed in the presence of the jury before it is admitted in evidence or that  
26 counsel has refused to stipulate that such matter will not be mentioned or displayed in the  
27 presence of the jury unless and until it is admitted in evidence; and (3) a statement of the  
28



1 specific prejudice that will be suffered by the moving party if the motion in limine is not  
2 granted.

3 (d) Unless ordered by the Court, no supplemental or separate memorandum of  
4 points and authorities shall be filed by either party in connection with any motion in limine.

5 (e) The Court will not consider any motion in limine in the absence of a joint  
6 motion or a declaration from counsel for the moving party establishing that opposing  
7 counsel: (1) failed to confer in a timely manner; (2) failed to provide the opposing party's  
8 portion of the joint motion in a timely manner; or (3) refused to sign and return the joint  
9 motion after the opposing party's portion was added.

10 (f) The failure of any counsel to comply with or cooperate in the foregoing  
11 procedures will result in the imposition of sanctions, including a resolution of the issue  
12 against the party refusing to cooperate.

13 7. Pretrial Conference and Trial Setting. Compliance with the requirements of Local  
14 Rule 16 is mandatory. Counsel shall submit carefully prepared Memoranda of Contentions  
15 of Fact and Law (which may also serve as the trial briefs) and Proposed Pre-Trial  
16 Conference Order ("PTCO") in accordance with the provisions of Local Rules 16-2.8  
17 through 16-6. The Proposed Pre-Trial Conference Order shall conform to the example set  
18 forth in Appendix A to the Local Rules, modified as necessary to comply with this order.

19 The Memoranda of Contentions of Fact and Law, Exhibit Lists, and Witness Lists  
20 shall be served and filed no later than fourteen (14) days before the Pre-Trial Conference.  
21 The Proposed Pre-Trial Conference Order shall be filed fourteen (14) days before the Pre-  
22 Trial Conference.

23 The Proposed Pre-Trial Conference Order must contain a Table of Contents. Place  
24 in all capital letters and in bold the separately numbered headings for each category in the  
25 PTCO. Under paragraph 1, list each claim, counterclaim, or defense that has been dismissed  
26 or abandoned. In multiple party cases where not all claims or counterclaims will be  
27 prosecuted against all remaining parties on the other side, please specify to which party each  
28 claim or counterclaim directed. The factual issues in dispute should track the elements of a

1 claim or defense upon which the jury would be required to make findings. Counsel should  
2 state issues in ultimate fact form, not as evidentiary fact issues (i.e., “was the defendant  
3 negligent,” “was defendant’s negligence the proximate cause of plaintiff’s injury;” not “was  
4 the plaintiff standing on the corner of 5th and Spring at 10:00 a.m. on May 3”). Issues of  
5 law should state legal issues upon which the Court will be required to rule after the Pre-Trial  
6 Conference, including during the trial, and should not list ultimate fact issues to be  
7 submitted to the trier of fact.

8 In drafting the PTCO, the Court expects that counsel will attempt to agree on and  
9 set forth as many non-contested facts as possible. The Court will normally read the  
10 uncontested facts to the jury at the start of the trial. Carefully drafted and comprehensively  
11 stated stipulation of facts will reduce the length of trial and increase jury understanding of  
12 the case.

13 If expert witnesses are to be called at trial, each party must list and identify its  
14 respective expert witnesses, both retained and non-retained. Failure of a party to list and  
15 identify an expert witness in the Proposed Pre-Trial Conference Order shall preclude a party  
16 from calling that expert witness at trial.

17 This case has been placed on calendar for a Final Pretrial Conference (“PTC”)  
18 pursuant to F. R. Civ. P. 16 and Local Rule 16-1, unless the PTC was expressly waived at  
19 the Scheduling Conference by the Court. Unless excused for good cause, each party  
20 appearing in this action shall be represented at the PTC and all pretrial meetings of counsel,  
21 by lead trial counsel. The failure to attend the PTC or to submit the required pretrial  
22 documents may result in the dismissal of the action, striking the answer and entering a  
23 default, and/or the imposition of sanctions.

24 A continuance of the Final Pretrial Conference at counsel’s request or stipulation is  
25 highly unlikely. Counsel should plan to do the necessary pretrial work on a schedule which  
26 will insure its completion with time to spare before the Final Pretrial Conference.  
27 Specifically, failure to complete discovery work, including expert discovery, is not a ground  
28 for a continuance.

1 Compliance with the requirements of Local Rules 16-1 to 16-13 is required by the  
2 Court. Carefully prepared Memoranda of Contentions of Fact (which may also serve as the  
3 trial brief) and a proposed Final Pretrial Conference Order shall be submitted in accordance  
4 with the provisions of Local Rule 16-6 and the form of the proposed Final Pretrial  
5 Conference Order shall be in conformity with the format set forth in Appendix A to the  
6 Local Rules.

7 At the PTC, counsel should be prepared to discuss means of streamlining the trial,  
8 including, but not limited to: bifurcation, presentation of non-critical testimony by  
9 deposition excerpts, stipulations as to the content of testimony, presentation of testimony on  
10 direct examination by declaration subject to cross-examination, and qualification of experts  
11 by admitted resumes. In rare cases where the PTC is waived by the Court, counsel must  
12 follow Local Rule 16-10.

13 8. Summary of Witness Testimony and Time Estimates. Counsel shall prepare a list  
14 of their witnesses, including a brief summary (two to three paragraphs) of each witness'  
15 expected testimony and an estimate of the length of time needed for direct examination; and  
16 whether the witness will testify by deposition or in person. Counsel shall exchange these  
17 lists with opposing counsel. **Counsel shall jointly file a single list of witness testimony**  
18 **summaries, including estimates for direct examination of their own witnesses and**  
19 **estimates for cross-examination of opposing witnesses.** These statements shall be filed at  
20 the time counsel file the Proposed Pre-Trial Conference Order, i.e., fourteen (14) days  
21 before the Pre-Trial Conference. A copy of the Joint Trial Witness Form is attached to this  
22 Order.

23 If a party desires to offer deposition testimony into evidence at trial, he shall  
24 designate only those relevant portions of same which he wishes to read at trial and advise  
25 opposing counsel of same. Opposing counsel shall then designate those relevant portions of  
26 such deposition which he wishes to offer in evidence. All objections to any such testimony  
27 shall be made in writing and filed at the same time counsel file the Proposed Pre-Trial  
28 Conference Order so the Court may consider whether ruling on such objections will either



1 facilitate the conduct of the trial or result in the disposition of certain evidentiary matters  
2 that may assist continuing settlement negotiations.

3 9. Jury Instructions and Verdict Forms. Fourteen (14) days prior to counsel's Rule  
4 16 pre-trial meeting, counsel shall exchange proposed jury instructions (general and special)  
5 and special verdict forms (if applicable). Seven (7) days prior to the Rule 16-2 meeting,  
6 counsel shall exchange any objections to the instructions and special verdict forms. Prior to,  
7 or at the time of the Rule 16 meeting, counsel shall meet and confer with the goal of  
8 reaching agreement on one set of joint jury instructions and one special verdict form.

9 The parties should make every attempt to agree upon the jury instructions before  
10 submitting them to the Court. The Court expects counsel to agree on the substantial  
11 majority of jury instructions, particularly when pattern instructions provide a statement of  
12 applicable law. When the Manual of Model Civil Jury Instructions for the Ninth Circuit  
13 provides a version of an applicable requested instruction, the parties should submit the most  
14 recent version of the Model instruction. Where language appears in brackets in the model  
15 instruction, counsel shall select the appropriate text and eliminate the inapplicable bracketed  
16 text. Where California law applies, counsel should use the current edition of the Judicial  
17 Council of California Civil Jury Instructions ("CACI"). If neither of the above sources is  
18 applicable, counsel are directed to use the instructions from O'Malley, Grenig & Lee  
19 (formerly Devitt, et al.), Federal Jury Practice and Instructions (latest edition). Each  
20 requested jury instruction shall cover only one subject or principle of law and shall be  
21 numbered and set forth in full on a separate page, citing the authority or source of the  
22 requested instruction (except for the "clean" jury copy discussed below).

23 When the parties disagree on an instruction, the party opposing the instruction  
24 must attach a short statement (one to two paragraphs) supporting the objection, and the party  
25 submitting the instruction must attach a short statement supporting the instruction. Each  
26 statement should be on a separate page and should follow directly after the disputed  
27 instruction.  
28

1 The parties ultimately must submit one document or, if the parties disagree over  
2 any proposed jury instructions, two documents. If the parties submit two documents, those  
3 documents shall consist of: (1) a set of Joint Proposed Jury Instructions and (2) a set of  
4 Disputed Jury Instructions, along with reasons supporting and opposing each disputed  
5 instruction in the format set forth in the previous paragraph.

6 The parties must file proposed jury instructions fourteen (14) days before the Pre-  
7 Trial Conference. If the court is closed that day, counsel shall file the proposed instructions  
8 the preceding Friday. No later than 5:00 p.m. on the date such instructions are due, the  
9 parties must submit conformed courtesy copies to the Court's courtesy box located outside  
10 the entrance to chambers on the Spring Street level of the U.S. Courthouse. Counsel shall  
11 also submit a copy of the proposed jury instructions to the Court's ECF e-mail address in  
12 WordPerfect format (X6 or earlier versions) or Microsoft Word (Word 2010 or earlier  
13 versions) in accordance with this paragraph and the previous paragraph.

14 The Court will send a copy of the instructions into the jury room for the jury's use  
15 during deliberations. Accordingly, in addition to the file copies described above, the e-mail  
16 containing the jury instructions shall contain a "clean set" of Joint Proposed and/or Disputed  
17 Jury Instructions, containing only the text of each instruction set forth in full on each page,  
18 with the caption "Court's Instruction No. \_\_\_\_" (eliminating titles, supporting authority,  
19 indication of party proposing, etc.).

20 An index page shall accompany all jury instructions submitted to the Court. The  
21 index page shall indicate the following:

- 22 (a) The number of the instruction;  
23 (b) A brief title of the instruction;  
24 (c) The source of the instruction and any relevant case citations; and  
25 (d) The page number of the instruction.

26 EXAMPLE:

<u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page</u>
1	Trademark-Defined	9th Cir. 15.3.2	7

(15 U.S.C. § 1127)

Along with the jury instructions, counsel shall submit any necessary special verdict form fourteen (14) days before the Pre-Trial Conference and e-mail any such proposed special verdict form in WordPerfect format (X6 or earlier versions) or Microsoft Word (Word 2010 or earlier versions) to the Court's ECF e-mail address.

10. Voir Dire Questions. Counsel may, but need not, submit brief proposed voir dire questions for the jury at the Pre-Trial Conference. The Court will conduct its own voir dire after consulting any proposed voir dire submitted by counsel.

11. Joint Statement of the Case. Counsel shall submit a joint statement of the case at the Pretrial Conference. The joint statement of the case will be read to the prospective panel of jurors prior to the commencement of voir dire. The statement should not exceed one page. The statement shall be filed with the Court at the Pre-Trial Conference.

12. Exhibits. The parties shall file their witness lists and exhibits lists in accordance with Local Rule 16. Counsel are to assemble their exhibits by placing them in three-ring binders labeled on the spine portion of the binder showing both the volume number and the exhibit numbers. Each exhibit shall be separated by a tabbed divider on the right side. Counsel shall provide original exhibits for the Courtroom Deputy Clerk and a duplicate set for the judge. The original exhibits shall be tagged with the appropriate exhibit tags in the upper or lower right corner of the first page of each exhibit. Each binder shall contain a Table of Contents. Counsel must comply with Local Rule 26-4 when numbering the exhibits. The Clerk's Office, Room G-8, 312 North Spring Street, Los Angeles, California can supply counsel with appropriate exhibit tags.

13. Pre-Trial Exhibit Stipulation. The parties shall prepare a Pre-Trial Exhibit Stipulation which shall contain each party's numbered list of trial exhibits, with objections, if any, to each exhibit including the basis of the objection and the offering party's response. All exhibits to which there is no objection shall be deemed admitted. All parties shall stipulate to the authenticity of exhibits whenever possible, and the Pre-Trial Exhibit



Stipulation shall identify any exhibits whose authenticity has not been stipulated to and the specific reasons for the party's failure to stipulate.

The Stipulation shall be substantially in the following form:

Pre-Trial Exhibit Stipulation

Plaintiff's Exhibits

<u>Number</u>	<u>Description</u>	<u>Objection</u>	<u>Response to Objection</u>
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Defendant's Exhibits

<u>Number</u>	<u>Description</u>	<u>Objection</u>	<u>Response to Objection</u>
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The Pre-Trial Exhibit Stipulation shall be filed at the same time as counsel files the Proposed Pre-Trial Conference Order. Failure to comply with this paragraph shall constitute a waiver of all objections.

The Court requires the following to be submitted to the Courtroom Deputy Clerk on the first day of trial:

- (1) The original exhibits with the Court's exhibit tags. Plaintiff shall use yellow tags; defendant shall use blue tags. Each tag shall be stapled to the front of the exhibit on the upper right corner and include the case number, case name, and exhibit number.
- (2) One bench book with a copy of each exhibit for the Court's use, tabbed as described above; a copy of the witness lists).
- (3) Three (3) copies of exhibit lists. The exhibit list should also be submitted to the Court's ECF e-mail address in both a PDF version and a WordPerfect(X6 or earlier versions) or Microsoft Word (Word 2010 or earlier versions) version.
- (4) Three (3) copies of witness lists in the order in which the witnesses will be called to testify.

1 All counsel are to meet no later than fourteen (14) days before trial to discuss and  
2 agree to the extent possible on issues including foundation and admissibility.

3 14. Findings of Fact and Conclusions of Law. For a non-jury trial, counsel for each  
4 party shall file and serve proposed findings of fact and conclusions of law fourteen days  
5 before trial. The parties should also e-mail these proposed findings of fact and conclusions  
6 of law in WordPerfect format (X6 or earlier versions) or Microsoft Word (Word 2010 or  
7 earlier versions) to the Court's ECF e-mail address. Counsel for each party shall then:

- 8 (1) Underline or highlight in red the portions which it disputes;
- 9 (2) Underline or highlight in blue the portions which it admits; and
- 10 (3) Underline or highlight in yellow the portions which it does not dispute,  
11 but deems irrelevant.

12 Counsel may agree with a part of a finding or conclusion, disagree with a part of it  
13 and/or consider a part of it irrelevant.

14 The parties should then file and serve their respective objections to the other  
15 party's proposed findings of fact and conclusions of law. Courtesy copies of the marked  
16 copies shall be delivered to the courtesy box next to the entrance to chambers on the Spring  
17 Street level of the U.S. Courthouse, 312 North Spring Street, by 12:00 noon of the business  
18 day following filing.

19 15. Settlement. Local Rule 16-15.2 provides that the Settlement Conference shall be  
20 conducted not later than 45 days before the Pretrial Conference. The Court believes that in  
21 most cases completion of all discovery and dispositive motions will help the parties assess  
22 their positions before they embark on the costly pre-trial process. However, in many cases,  
23 the parties find it more difficult to settle after they have incurred the cost of all discovery  
24 and motion practice. Accordingly, the Court strongly encourages counsel and the parties to  
25 pursue settlement earlier.

26 Notwithstanding the provisions of Local Rule 16-15.5, unless the parties have  
27 received prior approval by the Court, lead trial counsel and each party shall appear at the  
28 settlement proceeding in person or, in the case of a corporation or other non-governmental

1 entity, by a corporate representative with final authority to settle the case and who is  
2 knowledgeable about the facts of the case. Representatives of insurers with decision-making  
3 authority are also required to attend the settlement proceedings in person unless their  
4 presence is expressly excused by the Court. The Court's requirement that lead trial counsel,  
5 parties, corporate representatives, and insurer representatives must appear at the settlement  
6 proceedings in person unless they have been expressly excused by the Court applies to  
7 individuals located both within and outside the Central District of California.

8 The Court has a keen interest in helping the parties achieve settlement. If the  
9 parties believe that it would be more likely that a settlement would be reached if they  
10 conduct settlement conference at an earlier time than that specified by the Court, they should  
11 conduct it at that time. In any event, the parties must together file a single Joint Status  
12 Report re Settlement at the time they file the Proposed Pretrial Order.

13 The Court will not conduct settlement conferences in non-jury cases which the  
14 Court will try. In jury cases, the Court will conduct a settlement conference at the parties'  
15 request if three conditions exist:

- 16 1. The parties are satisfied that the fact issues in the case will be tried to a jury;
- 17 2. All significant pre-trial rulings which Court must make have been made; and
- 18 3. The parties desire the Court to conduct the conference, understanding that if  
19 settlement fails, the Court will preside over the trial of the case.

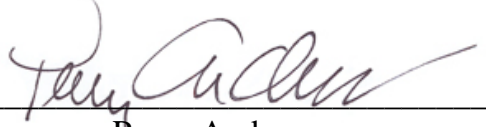
20 16. Sanctions. The failure to attend the pretrial conference or to submit in conformity  
21 with this order, the jury instructions, pre-trial exhibit stipulation, joint statement of the case,  
22 voir dire questions, summary of witness testimony and times estimates, proposed Pretrial  
23  
24  
25  
26  
27  
28



1 Conference Order or the memorandum of contentions of fact and law may result in the  
2 dismissal of the action, striking the answer and entering default and/or the imposition of  
3 sanctions.

4 IT IS SO ORDERED.

5 Dated: July 23, 2015

6   
7 \_\_\_\_\_  
8 Percy Anderson  
9 UNITED STATES DISTRICT JUDGE

10 Revised: 10/29/2013

JOINT TRIAL WITNESS ESTIMATE FORM

CA \_\_\_\_\_  
SE: \_\_\_\_\_

TRIAL DATE: \_\_\_\_\_  
\_\_\_\_\_

	WITNESS NAME	PARTY CALLING WITNESS AND ESTIMATE	X- EXAMINER 'S ESTIMATE	DESCRIPTION OF TESTIMONY	COMMENTS
1					
2					
3					
4					
5					
6					
7					
8					
9					
1					
	TOTAL ESTIMATES THIS PAGE:				

Instructions:

- (1) List witnesses (last name first); (2) For description, be extremely brief, e.g., “eyewitness to accident.” Or “expert on standard of care.”  
(3) Use estimates within fractions of an hour, rounded off to closest quarter of an hour. E.g., if you estimate 20 minutes, make it .25. An

estimate of one and one-half hours would be 1.5. An estimate of three-quarters of an hour would be .75; (4) Note special factors in “Comments” column. E.g., “Needs interpreter.” (5) Entries may be in handwriting if very neat and legible.